

Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the City Council of the City of Midland is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

**CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
October 6, 2020 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall**



Videoconference Information

Please click this URL to join.

<https://zoom.us/j/97282774495?pwd=bEpDaFZwTDhZK1d3c3orUmN2WGNhdz09>

Passcode: 107389

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 972 8277 4495

International numbers available:<https://zoom.us/u/aLorSsJd>

The City Council may discuss, consider, and take action on any item listed on this agenda.

OPENING ITEMS

1. Invocation – Pastor Phil Allman, Grace Lutheran Church
2. Pledge of Allegiance

PRESENTATIONS

3. PROCLAMATION FOR 2020 ARTS COUNCIL OF MIDLAND DAY

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR CITY COUNCIL MEETING OF SEPTEMBER 22, 2020

5. 2020-154 – RESOLUTION APPROVING THE SOLE-SOURCE MASTER AGREEMENT FOR NEPTUNE WATER METERS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION OF THE FINANCE DEPARTMENT FROM CORE & MAIN, LP, AT A TOTAL COST NOT TO EXCEED \$2,999,933.85 (GENERAL SERVICES)
6. 2020-155 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC., FOR THE ANALYSIS AND DESIGN FOR THE REPLACEMENT OF THE WATER SOURCE FOR THE MIDLAND INTERNATIONAL AIR AND SPACE PORT WATER SYSTEM FOR THE UTILITIES DEPARTMENT FOR A COST OF \$323,296.00; AND APPROVING \$64,660.00 FOR CONTINGENCIES (GENERAL SERVICES)
7. 116-2020 – MOTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND PAUL ARMSTRONG DBA SKYWEST AVIATION, INC., REGARDING HANGAR S-14 LOCATED ON CITY-OWNED PROPERTY DESCRIBED AS TRACT 2-B OF LOT 1A, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS (AIRPORTS)
8. 117-2020 – MOTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND EMPIRE AIRLINES, INCORPORATED, REGARDING HANGAR S-13 LOCATED ON CITY-OWNED PROPERTY DESCRIBED AS TRACT 2-B OF LOT 1A, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS (AIRPORTS)
9. 118-2020 – MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND FREESE AND NICHOLS, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS (CITY MANAGER'S OFFICE)
10. 119-2020 – MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND KIMLEY-HORN AND ASSOCIATES, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS (CITY MANAGER'S OFFICE)
11. 120-2020 – MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND PARKHILL, SMITH & COOPER, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS (CITY MANAGER'S OFFICE)
12. 2020-156 – RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR THE CASA DE AMIGOS HOME CLEANING PROJECT IN THE AMOUNT OF \$40,000.00; THE

PURPOSE OF THIS PROJECT IS TO PROVIDE HOME CLEANING SERVICES TO PROMOTE THE ENVIRONMENTAL AND PHYSICAL HEALTH OF SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)

13. 2020-157 – RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH MISSION HEALTH CARE, INC., FOR THE MISSION CENTER TAKE HOME TERRIFIC PROJECT IN THE AMOUNT OF \$30,000.00; THE PURPOSE OF THIS PROJECT IS TO PROVIDE DELIVERED EVENING MEALS TO SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)
14. 2020-158 – RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH SENIOR LIFE MIDLAND, INC., FOR THE SENIOR NUTRITION PROGRAM IN THE AMOUNT OF \$68,000.00; THE PURPOSE OF THIS PROJECT IS TO PROMOTE THE NUTRITIONAL AND PHYSICAL HEALTH OF PROGRAM PARTICIPANTS; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)
15. 2020-159 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MIDLAND AND WEST TEXAS FOOD BANK FOR THE CARES WEST TEXAS FOOD BANK PROJECT (DEVELOPMENT SERVICES)
16. 2020-160 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MIDLAND AND CASA DE AMIGOS OF MIDLAND, TEXAS, INC., FOR THE CASA DE AMIGOS - CARES CITYWIDE COMMUNITY SERVICES PROJECT (DEVELOPMENT SERVICES)
17. 2020-161 – RESOLUTION AUTHORIZING THE MAYOR, CITY MANAGER, AND CITY ATTORNEY TO ACCEPT AND EXECUTE THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT GRANT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT IN THE AMOUNT OF \$1,441,115.00 (DEVELOPMENT SERVICES)
18. 121-2020 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF HANKS SOUTH INDUSTRIAL PARK, BEING A PLAT OF AN 80-ACRE TRACT OF LAND LOCATED IN BLOCK 38, T-2-S, B.F. WALCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND LOCATED IN BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH COUNTY ROAD 1160 AND EAST COUNTY ROAD 150 (EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)
19. 2020-162 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR A LOCAL ON-SYSTEM IMPROVEMENT PROJECT WITH THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE DESIGN AND CONSTRUCTION OF U-TURN LANES AND LEFT-

TURN LANES ON THE EASTBOUND FRONTAGE ROAD AND THE WESTBOUND FRONTAGE ROAD OF LOOP 250 AT MIDKIFF ROAD; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CERTIFY A COPY OF THIS RESOLUTION TO TXDOT (ENGINEERING SERVICES)

20. 2020-163 – RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE AN APPROXIMATE 20-ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, LOCATED AT OR ABOUT 6400 WEST U.S. HIGHWAY 80; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID TRACT, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (ENGINEERING SERVICES)
21. 122-2020 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND BETA CRUDE CONNECTOR, LLC. REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 38, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, MIDLAND AND MARTIN COUNTIES, TEXAS (UTILITIES)
22. 123-2020 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND BETA CRUDE CONNECTOR, LLC. REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 7 AND 18, BLOCK 38, TOWNSHIP 1 SOUTH, T&P RR CO. MIDLAND COUNTY, TEXAS (UTILITIES)
23. 124-2020 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND BETA CRUDE CONNECTOR, LLC. REGARDING CITY-OWNED PROPERTY LOCATED IN SECTION 22, BLOCK 40, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY A-1391, MIDLAND COUNTY, TEXAS (UTILITIES)
24. 2020-164 – RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 4.91-ACRE UTILITY EASEMENT OUT OF SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AT A COST NOT TO EXCEED \$122,850.00; AND ORDERING RECORDATION BY THE CITY SECRETARY (UTILITIES)

SECOND READINGS

25. 10115 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET), BY PERMITTING (1) A REDUCED MINIMUM LOT AREA, (2) A REDUCED MINIMUM LOT WIDTH, AND (3) A REDUCED MINIMUM LOT DEPTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT; CONTAINING

A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD SEPTEMBER 22, 2020)

26. 10091 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 14, 2020)

PUBLIC HEARINGS

The City Council will hold public hearings on the following items:

27. 125-2020 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO DIAMONDBACK E&P LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MISSOULA UNIT 806LS; MISSOULA UNIT 817MS; BUTTE UNIT 805LS; AND BUTTE UNIT 816MS; SAID WELLS BEING GENERALLY LOCATED 409 FEET NORTH OF GREEN TREE BOULEVARD EXTENSION AND BETWEEN 2,062 FEET AND 2,122 FEET WEST OF NORTH MIDKIFF ROAD EXTENSION (DEVELOPMENT SERVICES)
28. 126-2020 – RECEIVE PUBLIC COMMENTS REGARDING THE DEVELOPMENT OF THE CITY’S (COVID) COMMUNITY DEVELOPMENT PROGRAM RELIEF PROJECTS FUNDS (DEVELOPMENT SERVICES)
29. 10116 – AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES”, OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (UTILITIES)

MISCELLANEOUS

30. 2020-165 – RESOLUTION AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGREEMENT FOR COMMERCIAL SALTWATER DISPOSAL OPERATIONS AT T-BAR RANCH (GENERAL SERVICES)

EXECUTIVE SESSION

31. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

- a. Section 551.072, Deliberation Regarding Real Property
- a.1. Discuss the purchase, exchange, lease, or value of real property

Respectfully Submitted,

Robert Patrick
Interim City Manager

MEETING ASSISTANCE INFORMATION: The Midland City Hall and Council Chamber are wheelchair accessible. If you need special assistance to participate in this meeting, please contact the City Secretary's Office at (432) 685-7430. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**MIDLAND CITY COUNCIL
MINUTES
September 22, 2020**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., September 22, 2020.

Council Members present: Patrick Payton, Spencer Robnett, Michael Trost, Scott Dufford, John Norman, Jack Ladd, Lori Blong

Council Members absent: None

Staff members present: City Attorney John Ohnemiller, Assistant City Manager Robert Patrick, Assistant City Manager Morris Williams

The meeting was called to order at 10:00 a.m.

OPENING ITEMS

Council Member Spencer Robnett presented a proclamation to Earl Erdman, recognizing his 19 years of service on the Airport Planning & Development Board.

1. Invocation – Dr. Darin Wood, First Baptist Church
2. Pledge of Allegiance

CONSENT AGENDA

John Norman moved to approve the Consent Agenda, excluding items 5, 7, 9, 13, 14, 17; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

3. MOTION APPROVING THE FOLLOWING MINUTES:

- a. SPECIAL CITY COUNCIL MEETING OF SEPTEMBER 3, 2020

- b. REGULAR CITY COUNCIL MEETING OF SEPTEMBER 8, 2020

4. 2020-148 – RESOLUTION AWARDDING A CONTRACT FOR THE TRADEWINDS BOULEVARD ROUNDABOUT AND MEDIAN IMPROVEMENTS PROJECT TO ONYX GENERAL CONTRACTORS LLC OF MIDLAND, TEXAS, AT A TOTAL COST OF \$436,399.00; AND AUTHORIZING PAYMENT (GENERAL SERVICES)
6. 106-2020 – MOTION AUTHORIZING THE EXECUTION OF A GRANT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) TO PROVIDE FOR THE CITY OF MIDLAND'S PARTICIPATION IN THE 2021 ROUTINE AIRPORT MAINTENANCE PROGRAM (RAMP); AND AUTHORIZING THE APPROPRIATION OF \$25,000.00 FROM THE AIRPORT OPERATING FUND (500) UNAPPROPRIATED FUND BALANCE (35650) TO THE TXDOT RAMP AGREEMENT PROJECT (700288) (AIRPORTS)
8. 2020-150 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MID-TEX OF MIDLAND, INC., IN THE AMOUNT OF \$585,500.00 FOR THE MAF GATE 6 PASSENGER BOARDING BRIDGE INFRASTRUCTURE PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (AIRPORTS)
10. 109-2020 – MOTION TO APPROPRIATE THE SUM OF \$157,420.00 FROM THE AIRPORT OPERATING FUND (500) UNAPPROPRIATED FUND BALANCE (35650) TO THE DEVELOPMENT PARK PROGRAMMATIC ENVIRONMENTAL PROJECT (900111) (AIRPORTS)
11. 110-2020 – MOTION TO APPROPRIATE THE SUM OF \$800,000.00 FROM THE FISCAL YEAR 2020 PARKS OPERATING BUDGET (001090) TO THE PLAYGROUND REPLACEMENT PROJECT (COMMUNITY SERVICES)
12. 111-2020 – MOTION TO APPROPRIATE THE SUM OF \$28,600.00 FROM THE FISCAL YEAR 2020 PARKS OPERATING BUDGET (001090-54015) TO THE BMX TRACK IMPROVEMENT PROJECT (COMMUNITY SERVICES)
15. 114-2020 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF PIONEER INDUSTRIAL PARK, BEING A PLAT OF A 43.196-ACRES TRACT OF LAND LOCATED IN SECTION 25, BLOCK 39, T-2-S, T&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS, (GENERALLY LOCATED ON THE WEST SIDE OF FARM TO MARKET ROAD 715, APPROXIMATELY 456 FEET SOUTH OF EAST COUNTY ROAD 140 - EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)
16. 2020-151 – RESOLUTION AUTHORIZING MIDLAND COUNTY, TEXAS TO PERFORM PAVING SERVICES (1) ON BUTTERFIELD TRAIL, FROM INTERSTATE 20 TO THE SOUTHERN BOUNDARY OF THE CITY OF MIDLAND, (2) ON SANTA FE TRAIL, FROM INTERSTATE 20 TO THE SOUTHERN BOUNDARY OF THE CITY OF MIDLAND, (3) ON CHISOLM TRAIL, FROM INTERSTATE 20 TO THE SOUTHERN BOUNDARY OF THE CITY OF MIDLAND, AND (4) GOODNIGHT TRAIL, FROM PEASE TRAIL TO THE SOUTHERN BOUNDARY OF THE CITY OF MIDLAND, IN ACCORDANCE WITH THE

CITY - COUNTY INTERLOCAL COOPERATION CONTRACT AUTHORIZED BY RESOLUTION NO. 2013-401; REAPPROPRIATING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED \$651,536.00 (ENGINEERING SERVICES)

18. 2020-152 – RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, IN SUPPORT OF MAYOR PATRICK PAYTON’S COMMENTS REGARDING MIDLAND OPENING FOR BUSINESS

The following items were pulled from consent agenda and considered individually.

5. 2020-149 – RESOLUTION AWARDING A CONTRACT FOR THE UTILITY EXTENSION PROGRAM 04 TO BOLER EQUIPMENT SERVICE, INC. OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED \$1,750,000.00; TRANSFERRING FUNDS; AND AUTHORIZING PAYMENT (GENERAL SERVICES)

Council Member Ladd asked for more information. Engineering Manager Josh Ferguson reported the program is intended for utility replacement and rehabilitation in the water and wastewater systems. The existing systems need repair. These are for smaller scale projects and tend to be used for emergency situations and will give the ability to do them without going through a big project and delaying it.

Jack Ladd moved to approve Resolution No. 2020-149; seconded by John Norman.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

7. 107-2020 – MOTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SILVERWING ENTERPRISES, LLC, TO PROVIDE PROFESSIONAL SERVICES IN SUPPORT OF THE OPERATION OF THE SPACEPORT LOCATED AT MIDLAND INTERNATIONAL AIR AND SPACE PORT (AIRPORTS)

Council Member Robnett pulled for a record vote.

Scott Dufford moved to approve Motion No. 107-2020; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Trost, Dufford, Norman, Ladd, Blong

NAY: Robnett

ABSTAIN: None

ABSENT: None

9. 108-2020 – MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 14 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., FOR IMPROVEMENTS CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM; SAID AMENDMENT TO PROVIDE FOR THE FOLLOWING PROJECTS: (I) MAF AIRFIELD WILDLIFE FENCE IMPROVEMENTS; (II) MAF AIRFIELD LIGHTING

REHABILITATION; (III) MAF AIRPORT WILDLIFE MANAGEMENT IMPROVEMENTS; (IV) MAF PASSENGER FACILITY CHARGE APPLICATIONS AND AMENDMENTS; AND (V) MAF PREPARE FBO RFP AND EVALUATE PROPOSALS; AND AUTHORIZING THE APPROPRIATION OF FUNDS FOR SAID PROJECTS (AIRPORTS)

Council Member Robnett asked if the money for this project included the fencing. Airports Director Justine Ruff reported it was just for design. There will be about 10 miles of fence and will cost about \$8-9 million to complete the project. This is a project that is covered by the FAA Passenger Facility Charge 100%. The current fence is 6 feet with three strands of barbed wire and nothing underneath. They have problems with wildlife getting under the fence. The new fence will have a concrete barrier underground and is a safety feature.

Council Member Dufford noted that Midland Airpark has the same issues. Justine agreed but noted there is no way for the FAA to help with that fence. She has asked TxDOT but is unsure if they will help. Mayor Payton gave direction for moving forward with the fencing at Midland Airpark.

Jack Ladd moved to approve Motion No. 108-2020; seconded by John Norman.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

13. 112-2020 – MOTION ACCEPTING MATCHING FUNDS IN THE AMOUNT OF \$16,000.00 FROM THE MIDLAND JUNIOR BASEBALL ASSOCIATION; SAID FUNDS SHALL BE MATCHED BY THE CITY OF MIDLAND FOR THE CONSTRUCTION OF NEW BATTING CAGES AT HOGAN PARK; AND APPROPRIATING THE SUM OF \$16,000.00 FROM THE FISCAL YEAR 2020 PARKS OPERATING BUDGET (001090-54015) TO THE HOGAN PARK BATTING CAGE PROJECT (COMMUNITY SERVICES)

Council Member Trost asked about the old batting cages that were located out there. Assistant Director of Community Services Laurie Williams reported the old batting cages were removed because they were in disrepair. This is for new construction at a different location near the baseball fields. She clarified that Midland Junior Baseball raised half the money needed and they will not be coin operated.

Lori Blong moved to approve Motion No. 112-2020; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

14. 113-2020 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF COYOTE RUN INDUSTRIAL SUBDIVISION, BEING A PLAT OF A 183.693-ACRE TRACT OF LAND LOCATED IN SECTION 35, BLOCK 38, T-1-N, T&P. RR CO. SURVEY, CITY OF

MIDLAND AND MARTIN COUNTY, TEXAS, (GENERALLY LOCATED ON THE EAST SIDE OF NORTH COUNTY ROAD 1150, APPROXIMATELY 8,437 FEET NORTH OF CROWNRIDGE DRIVE - EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)

Council Member Ladd asked if this will in any way inhibit the ability to create an outer loop. Traffic Engineer Mike Pacelli reported the loop would run to the north of this property and should not block it. Todd Road will run along the western boundary of the property and he believes a right-of-way dedication has been given for that alignment. He confirmed there is no definite alignment that has been set for the outer loop. The City has identified an option and has a rough idea, but there is not an exact plan in place, but he is confident it will be to the north of this property.

Thomas Johnston, Real Estate Ranch, 619 W. Texas Avenue, reported the project was master planned for arterial roads with thoroughfares for future expansion. They have reserved a 60-foot right-of-way and don't mind putting setbacks in place if the right-of-way needs to be expanded. This project has been delayed due to the coronavirus and they would like to get moving on it.

Spencer Robnett moved to approve Motion No. 113-2020; seconded by Lori Blong.

The motion by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

17. 103-2020 – MOTION ACCEPTING A 23.25-ACRE PUBLIC UTILITY EASEMENT OUT OF SECTIONS 3, 4, 9 & 10, BLOCK 39, T-1-S, T & P RR. CO SURVEY, MIDLAND COUNTY, TEXAS, FROM OCCIDENTAL PERMIAN LTD; A COPY OF THE PUBLIC UTILITY EASEMENT BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE DATE AND NUMBER OF THIS MOTION; AND ORDERING THE CITY SECRETARY TO RECORD SAID INSTRUMENT IN THE OFFICIAL REAL PROPERTY RECORDS OF MIDLAND COUNTY, TEXAS (UTILITIES) (DEFERRED FROM SEPTEMBER 8, 2020)

This item was pulled at the request of staff.

SECOND READINGS

19. 10112 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 15.70-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF TIN TRAIL, APPROXIMATELY 130 FEET EAST OF NORTH FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO

THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD SEPTEMBER 8, 2020. DEFERRED FROM SEPTEMBER 22, 2020))

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10112.

Chris Berry of Betenbough reported that there was a PD in the Legends Park. They are trying to get the most affordable home they can. Lumber prices have gone up noting OSB went from \$8 to \$24 a sheet. During this time they are trying to pass savings onto the homeowner to get the homes affordable by having five less feet of frontage. They do have a park on Carriage Road to the east past the school site and a walking trail along the western portion. He confirmed that the HOA would maintain ownership of any open grassy spaces.

Council Member Dufford noted that although it would only be an additional 3 or 4 homes here, in a larger area it could be 30 or 40 homes. He wants Council to be aware and thought we should get a few more concessions from Betenbough.

Council Member Trost noted that particle board and that type of structural material doesn't last very long. We are packing more homes in a smaller area and fears it is creating a bad formula down the road.

Mayor Payton had concern that people seem to think that houses this size end up as shanty towns or that people who need this size of home will let it run down as opposed to someone who can afford to live in a larger house. We have been begging people to provide affordable housing and did not hear any discussion about run down neighborhoods.

City Attorney John Ohnemiller cautioned that if they submit a different site plan it will need to go back through Planning & Zoning, but if you are talking about adding details such as adding amenities in open areas, that would be fine.

Spencer Robnett moved to defer the second and final reading of Ordinance No. 10112; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd

NAY: Blong

ABSTAIN: None

ABSENT: None

20. 10113 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 2 THROUGH 10, BLOCK 1, AND LOTS 1 THROUGH 7, BLOCK 2, LONE STAR BUSINESS PARK, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND OCCIDENTAL PARKWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD SEPTEMBER 8, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10113.

Development Services Director Chuck Harrington reported the property was zoned for office use along 349 noting it is not the best place for residential. Council agreed to have office space. They have not been able to market it and are proposing to change it to local retail to have more opportunities to market the properties. Staff had concern for cross-access issues, and those issues have been addressed.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10113; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

21. 10114 – AN ORDINANCE AMENDING TITLE X, “TRAFFIC REGULATIONS”, CHAPTER FOUR, “TRAFFIC CONTROL DEVICES”, SECTION 11, “SCHOOL ZONES”, OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9961; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION (ENGINEERING SERVICES) (FIRST READING HELD SEPTEMBER 8, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10114.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10114; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARINGS

The City Council will hold public hearings on the following items:

22. 10115 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET), BY PERMITTING (1) A REDUCED MINIMUM LOT AREA, (2) A REDUCED MINIMUM LOT WIDTH, AND (3) A REDUCED MINIMUM LOT DEPTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LI,

LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10115.

Mayor Payton opened the public hearing at 10:47 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Robnett noted that staff recommendation is to deny. Development Services Director Chuck Harrington reported that staff cannot support because no hardship has been demonstrated. The applicant could not show that it could not be developed in some other way. If Council decides to grant the special exception there are conditions in the ordinance. Council Member Blong felt this was a great way to allow people to creatively develop infill properties and Council should accommodate them.

John Norman moved to approve the second and final reading of Ordinance No. 10115; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

23. 2020-153 – RESOLUTION APPROVING THE ISSUANCE OF AN ORDER FINDING THE UNCOMPLETED RESIDENTIAL STRUCTURE LOCATED ON LOT 3, BLOCK 2, SOLOMON ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 5117 ALYSHEBA LANE, MIDLAND, TEXAS 79705) TO BE A SUBSTANDARD BUILDING AND ORDERING THE OWNER(S) OF SAID BUILDING AND LIENHOLDER(S) AND MORTGAGEE(S) HAVING AN INTEREST IN SAID BUILDING, IF ANY, TO TAKE ABATEMENT ACTION AS SPECIFIED IN THE ORDER, AND, IF SAID ABATEMENT ACTION IS NOT TAKEN, AUTHORIZING THE CITY OF MIDLAND TO TAKE ABATEMENT ACTION (DEVELOPMENT SERVICES)

Building Official Jeff Pinkstaff reported the building was started in 2013 and has had five permits and five contractors. The last active permit was issued in 2019 and expired May 2020. The structure remains uncompleted. A notice was sent with the items that need to be abated or removed.

Council Member Robnett asked what happens if the abatement actions do not take place. City Attorney John Ohnemiller reported they have 30 days to complete certain repairs. If the owner does not take action, then the building official takes action to demo the building and put a lien on the property. Council Member Robnett noted discussion happened about putting in a total timeline for residential construction such as 2 years. Staff reported that change would need to be changed by an Ordinance. Council Member Dufford

added that the owner has always done just enough to get the building official to give them another permit for six months. With the last storm they had items flying off of their roof that could have killed someone. When asked the reason for the delays, staff noted it was financial.

Mayor Payton opened the public hearing.

Frank Haigler speaking on behalf of the property owner, reported that he and the owner made up a list of projects needed to get the property finished. It would take a minimum of 3 to 3.5 months to complete. When asked the reason for the delays, Mr. Haigler confirmed it was financial problems and that the owner's daughter has agreed to take financial responsibility.

City Attorney John Ohnemiller reported that if Council wants to give more than 90 days, the owner needs to submit a detailed plan establishing that the work cannot be reasonably done in 90 days. The owner would have to meet with the building official to give updates and would be required to post a security bond. He clarified that Council is not required to give extra time.

At 11:01 a.m., Mayor Payton recessed the meeting to allow the City Attorney time to review the code.

The meeting was reconvened at 11:05 a.m. Mr. Ohnemiller reported that based on what was submitted, Council may provide additional time, but they are not required to do so. There are certain amendments needed if Council wants to do that. He emphasized it is not required and it is within Council's right to proceed with the 30-day notice.

There being no one else wishing to speak, the public hearing was closed at 11:06 a.m.

Mayor Payton noted that the City has been dealing with this issue since 2013 and his patience has worn out.

Jack Ladd moved to approve Resolution No. 2020-153; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

Mayor Payton noted that the Council would recess to Executive Session and then return to open meeting downstairs to hear the remaining two items. Council met in Executive Session until 11:38 a.m.

Mayor Payton reconvened Regular Session at 11:46 a.m. with all Council Members present.

24. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS (CITY SECRETARY'S OFFICE)

Michael Trost moved to appoint Gena Linebarger to replace Earl Erdman, Howard "Butch" Morgan to replace John Trischitti, Benjamin Fietz to replace Bill Dingus and Joshua Lorenz to replace Keith Valentine on the Airport Planning & Development Board; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to reappoint Wes Reeves to the Airport Planning & Development Board; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: Robnett

ABSENT: None

Lori Blong moved to appoint Brandon Ofield to replace Ashlee Nelson on the Citizens Development and Hotel/Motel Advisory Board; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to appoint Wes Gotcher to replace Marjorie McQuerry and Robert Lehrer to replace Brandon Bradley on the Midland Housing Authority Commission; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Jack Ladd moved to reappoint Dennis Bade on the Midland Housing Authority Commission; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to reappoint E.J. Baldrige and Iris Foster to the Midland-Odessa Urban Transit District Board; seconded by Spencer Robnett.

The motion by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to reappoint Court Adkins to the Oil and Gas Advisory Committee; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to move Lucy Sisniega from alternate member to regular member to replace Warren Ivey on the Planning & Zoning Commission; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Jack Ladd moved to appoint Emily Holeva as an alternate member of the Planning & Zoning Commission; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Lori Blong moved to appoint Zachary Deck to replace Joshua Sparks on the Planning & Zoning Commission; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Michael Trost moved to reappoint Diane Williams to the Planning & Zoning Commission; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None
ABSTAIN: None
ABSENT: None

Scott Dufford moved to move Stacey Grosse from alternate member to regular member to replace Kevin Wilton on the Planning & Zoning Commission; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

Spencer Robnett moved to appoint Adrian Carasco as alternate member to the Planning & Zoning Commission; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

25. 115-2020 – MOTION APPOINTING AN INTERIM CITY MANAGER, AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE INTERIM CITY MANAGER

Spencer Robnett moved to appoint Robert Patrick as Interim City Manager; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

EXECUTIVE SESSION

Mayor recessed the meeting to go to Executive Session at 11:08 a.m.

26. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

- a. Section 551.074, Personnel Matters
 - a.1. Deliberate the employment, evaluation, and duties of the Interim City Manager, City Attorney, and City Secretary

Council met in Executive Session until 11:38 a.m. (Items 24 and 25 were heard next.)

All the business at hand having been completed, the meeting adjourned at 12:09 p.m.

PASSED AND APPROVED October 6, 2020.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT



City Council Meeting

Item Number: 5
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Regina Stephenson, Director
Subject: RESOLUTION APPROVING THE SOLE-SOURCE MASTER AGREEMENT FOR NEPTUNE WATER METERS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION OF THE FINANCE DEPARTMENT FROM CORE & MAIN, LP, AT A TOTAL COST NOT TO EXCEED \$2,999,933.85 (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a sole source agreement for Neptune water meters with encoders and all associated parts to Core & Main LP for a cost of \$2,999,933.85

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY21 Water and Sewer Operating Budget (300340-52195).

Discussion:

The Customer Service Division of the Finance Department is using automatic read water meters utilizing Neptune water meters and associated parts. Core & Main LP is the sole authorized distributor for the Neptune Technology Group in the state of Texas. According to Texas Local Government Code 252.022 (a)(7)(A), competitive bidding requirements do not apply to items that are available from only one source due to “patents”, copyrights, secret processes, or natural monopolies. Staff recommends awarding a sole source agreement based on unit prices for various water meters with encoders and parts to Core & Main LP for a cost of \$2,999,933.85. Please see the attached memo from Tony Goyang, Customer Service Manager, for additional information.

Therefore, please consider a resolution awarding a sole source agreement based on unit prices for various water meters with encoders and parts to Core & Main LP of El Paso, Texas for a cost of \$2,999,933.85.



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Service Director, Erica Martinez, Purchasing Manager

FROM: Tony Goyang, Customer Service Manager

SUBJECT: Consider a Resolution approving the purchase of meters from Core & Main, Contractor for Neptune water meters and other Neptune parts.

DATE: September 10, 2020

The Customer Service Division is requesting approval of a resolution to purchase additional AMI meters from a sole source agreement for Neptune products from Core & Main for a Total Amount of \$2,999,933.85.

Only Core & Main can sell Neptune meters within our region. This agreement will run from October 1, 2020 to September 30, 2021. This will allow us to align the master agreement to the fiscal 2021 year going forward.

The Customer Service Division continues its plan to convert all existing water meters to Neptune radio-read meters. This will allow quicker and more reliable meter readings. The new registers will also store 96 days of hourly water consumption, which we can retrieve manually. This will provide us with more information to assist the water customers in determining any possible leaks and the cause.

Switching to radio read meters is our first step in establishing an Advance Metering Infrastructure (AMI) for the City of Midland.

This agreement is budgeted for 2021 Fiscal Year and will be paid from the Meter Shop Unit in the Water and Sewer Fund.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE SOLE-SOURCE
MASTER AGREEMENT FOR NEPTUNE WATER
METERS AND ASSOCIATED PARTS FOR THE
CUSTOMER SERVICE DIVISION OF THE FINANCE
DEPARTMENT FROM CORE & MAIN, LP, AT A
TOTAL COST NOT TO EXCEED \$2,999,933.85**

WHEREAS, the City of Midland's Customer Service Division of the Finance Department is establishing an Automatic Meter Interface System that requires the use of Neptune Water Meters and associated parts; and

WHEREAS, Core & Main, LP, is the sole authorized distributor for the Neptune Water Meters in Texas; and

WHEREAS, Core & Main, LP, has agreed to provide the City with the necessary water meters and associated parts for its Automatic Meter Interface System at a total cost not to exceed \$2,999,933.85; and

WHEREAS, said water meters are proprietary in nature and are available only from Core & Main, LP; and

WHEREAS, the City Council finds the price proposed for said water meters and associated parts to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve the sole-source master agreement for said water meters and associated parts;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Interim City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a sole-source master agreement with Core & Main, LP, for Neptune Water Meters and associated parts for the Customer Service Division of the Finance Department at a total cost not to exceed \$2,999,933.85. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Core & Main, LP, up to \$2,999,933.85 from funds available in the FY21 Water and Sewer Operating Budget (300340-52195) upon proper receipt of invoices or statements approved by the City Manager's Office.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

Mark Mason, Finance Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Master Agreement

#21000056

For

Water Meters with encoder registers and miscellaneous parts

THIS AGREEMENT, made this 23rd day of September, 2020, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Core & Main LP, hereinafter referred to as "Company".

1. Company agrees to sell Water Meters with encoder registers and miscellaneous parts listed in the attached Exhibit "A", as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Projected Cost: \$2,999,933.85

The above stated prices shall remain in effect for the full term of this agreement.

2. Said Water Meters with encoder registers and miscellaneous parts are to be delivered in such quantities and at such time as designated by the Purchasing Manager of City. The total quantity of products which City is obliged to purchase shall be the total of the quantities from time to time ordered by the Purchasing Manager of City, and which are delivered and accepted.

3. Payment by City shall be made within 30 days after receipt of invoices from Company which shall be subject to verification as to quantities and quality delivered as herein provided.

4. Such Water Meters with encoder registers and miscellaneous parts shall be delivered to City's Meter Shop, 1602 E Orchard, Midland, Texas. Freight and delivery charges are included in the purchase prices stated above.

5. The term of this agreement shall be for a period of 12 month(s) commencing on October 1, 2020, and terminating on September 30, 2021 unless sooner terminated as provided in this agreement. City may at its option, renew this agreement for a period of one additional year. In order to exercise this option, City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for master agreement payments due under the master agreement, then this master agreement shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

6. If Company fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of this agreement, Company shall be in default and notice in writing shall be given it of such default by the Purchasing Manager of City. If Company fails to cure such default within 30 days of such notice, City, acting by and through the Purchasing Manager, may at its option terminate and cancel this agreement, and, at the expense of Company, complete the agreement or cause the same to be completed.

In the event of such termination, all monies due Company under the terms of this agreement shall be

retained by City, but such retention shall not release Company from liability for its default. In such event, however, Company will be credited with the amount of money so retained toward any amount by which the cost of completion of the agreement, as above provided, exceeds the agreement price.

Such termination shall not effect or terminate any of the rights of City as against Company then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to City under the law.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

7. **Assignment:** Company shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

8. **Governing Law & Venue:** This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

9. **WAIVER OF ATTORNEY FEES:** BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY.

COMPANY AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

10. **RELEASE:** NOTWITHSTANDING ANY OTHER PROVISION, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S

EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

11. Independent Contractor: It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City; that Company shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

Company shall be an independent contractor under this agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

12. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire agreement are reasonable.

13. Third Party Beneficiary: City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

14. Governmental Immunity: By executing this agreement, the City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by

legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

15. **Consideration:** The terms of this master agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

16. **Compliance:** Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

17. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

18. **Records Retention and Production of Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

19. **Public Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

20. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Agreement and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Core & Main LP, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20____.

Notary Public, State of Texas



CUSTOMER	CONTACT	NOTES
CITY OF MIDLAND 1606 ORCHARD MIDLAND, TX 79701 Contact: Tony Goyang tgoyang@midlandtexas.gov	Job Midland 2020-21 AMR Meter Contract Bid Date: 09/11/2020 Bid #: 1475190	
Sales Representative Arnold Osuna (M) 915-449-0418 (T) 915-590-6922 (F) 915-590-7034 Arnold.Osuna@coreandmain.com	Core & Main 930 Pendale Rd El Paso, TX 79907 (T) 915-590-6922	



Bid Proposal for Midland 2020-21 AMR Meter Contract

CITY OF MIDLAND
 Bid Date: 09/11/2020
 Core & Main 1475190

Core & Main
 930 Pendale Rd
 El Paso, TX 79907
 Phone: 915-590-6922
 Fax: 915-590-7034

Seq#	Qty	Description	Units	Price	Ext Price
10	12000	T10 5/8X3/4 R900I PROCODER USG BRZ BTM 302 B&N 6' EXT ANTENNA TEST DATA ED2B21RPWG11S2326	EA	185.50	2,226,000.00
20	2055	T10 1 R900I PROCODER USG BRZ BTM 302 B&N 6' EXT ANTENNA TEST DATA ED2F21RPWG11S2326	EA	243.30	499,981.50
30	236	1-1/2 T-10 OVAL P-CODER SA PIT GAL ED2H11RPHG21S2294	EA	433.50	102,306.00
40	155	ET4ARWG3SG89 2 HP TURBINE MTR R900I ENHANCED GAL W/EXT. ANT. NO LEAD	EA	599.89	92,982.95
50	20	ET4BRWG3SG90 3 HPT ECODER PIT R900I 20' EXT ANT NO LEAD	EA	1,377.65	27,553.00
60	20	ET4CRWG3SG90 4" HPT TURBINE R9 00I METER W/20'EXT ANTENNA PIT GAL; NO LEAD	EA	1,495.95	29,919.00
70	10	6 HPT MTR PROCODER R900I 6' EXT ANTENNA USG ET4DRPWG11SG89	EA	2,119.14	21,191.40
Sub Total					2,999,933.85
Tax					0.00
Total					2,999,933.85

Branch Terms:

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES UPON THIRTY (30) CALENDAR DAYS' NOTICE TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>

November 21, 2019

Tony Goyang
City of Midland
Customer Service Manager

Tony,

I am writing this letter to confirm that Core and Main is the sole authorized distributor for Neptune Technology Group Products for the City of Midland and the entire State of Texas.

Core and Main handles our full line of Neptune Meters, Radio Frequency Meter Reading Systems, and parts. Their local sales person for the City of Midland is Arnold Osuna and he can be reached at (915) 449-0418. Core and Main also has a Meter and System Specialist on board that covers the Permian Basin area and his name is Ray Richardson and he can be reached at (505) 400-6464.

If you have any question or need anything else please give me a call at (281) 794-3133. We appreciate your business.

Sincerely,



Charlie Trimble
Senior Territory Manager



Master Agreement

#21000056

For

Water Meters with encoder registers and miscellaneous parts

THIS AGREEMENT, made this 23rd day of September, 2020, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Core & Main LP, hereinafter referred to as "Company".

1. Company agrees to sell Water Meters with encoder registers and miscellaneous parts listed in the attached Exhibit "A", as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Projected Cost: \$2,999,933.85

The above stated prices shall remain in effect for the full term of this agreement.

2. Said Water Meters with encoder registers and miscellaneous parts are to be delivered in such quantities and at such time as designated by the Purchasing Manager of City. The total quantity of products which City is obliged to purchase shall be the total of the quantities from time to time ordered by the Purchasing Manager of City, and which are delivered and accepted.

3. Payment by City shall be made within 30 days after receipt of invoices from Company which shall be subject to verification as to quantities and quality delivered as herein provided.

4. Such Water Meters with encoder registers and miscellaneous parts shall be delivered to City's Meter Shop, 1602 E Orchard, Midland, Texas. Freight and delivery charges are included in the purchase prices stated above.

5. The term of this agreement shall be for a period of 12 month(s) commencing on October 1, 2020, and terminating on September 30, 2021 unless sooner terminated as provided in this agreement. City may at its option, renew this agreement for a period of one additional year. In order to exercise this option, City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for master agreement payments due under the master agreement, then this master agreement shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

6. If Company fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of this agreement, Company shall be in default and notice in writing shall be given it of such default by the Purchasing Manager of City. If Company fails to cure such default within 30 days of such notice, City, acting by and through the Purchasing Manager, may at its option terminate and cancel this agreement, and, at the expense of Company, complete the agreement or cause the same to be completed.

In the event of such termination, all monies due Company under the terms of this agreement shall be

retained by City, but such retention shall not release Company from liability for its default. In such event, however, Company will be credited with the amount of money so retained toward any amount by which the cost of completion of the agreement, as above provided, exceeds the agreement price.

Such termination shall not effect or terminate any of the rights of City as against Company then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to City under the law.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

7. **Assignment:** Company shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

8. **Governing Law & Venue:** This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

9. **WAIVER OF ATTORNEY FEES:** BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY.

COMPANY AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

10. **RELEASE:** NOTWITHSTANDING ANY OTHER PROVISION, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S

EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

11. Independent Contractor: It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City; that Company shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

Company shall be an independent contractor under this agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

12. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire agreement are reasonable.

13. Third Party Beneficiary: City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

14. Governmental Immunity: By executing this agreement, the City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by

legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

15. **Consideration:** The terms of this master agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

16. **Compliance:** Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

17. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

18. **Records Retention and Production of Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

19. **Public Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

20. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Agreement and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: Thomas Eckels

Name: Thomas Eckels

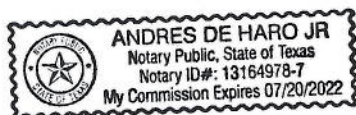
Title: Branch Manager

STATE OF Texas §

COUNTY OF El Paso §

BEFORE ME, the undersigned authority, on this 24 day of September, 2020 personally appeared, Thomas Eckels, an officer of Core & Main LP, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24 day of September, 2020.



[Signature]

Notary Public, State of Texas



EXHIBIT "A"

Bid Proposal for Midland 2020-21 AMR Meter Contract

CUSTOMER	CITY OF MIDLAND 1606 ORCHARD MIDLAND, TX 79701 Contact: Tony Goyang tgoyang@midlandtexas.gov	Job Midland 2020-21 AMR Meter Contract Bid Date: 09/11/2020 Bid #: 1475190
	CONTACT	Sales Representative Arnold Osuna (M) 915-449-0418 (T) 915-590-6922 (F) 915-590-7034 Arnold.Osuna@coreandmain.com
NOTES		



Bid Proposal for Midland 2020-21 AMR Meter Contract

CITY OF MIDLAND
Bid Date: 09/11/2020
Core & Main 1475190

Core & Main
 930 Pendale Rd
 El Paso, TX 79907
Phone: 915-590-6922
Fax: 915-590-7034

Seq#	Qty	Description	Units	Price	Ext Price
10	12000	T10 5/8X3/4 R900I PROCODER USG BRZ BTM 302 B&N 6' EXT ANTENNA TEST DATA ED2B21RPWG11S2326	EA	185.50	2,226,000.00
20	2055	T10 1 R900I PROCODER USG BRZ BTM 302 B&N 6' EXT ANTENNA TEST DATA ED2F21RPWG11S2326	EA	243.30	499,981.50
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Sub Total					2,999,933.85
Tax					0.00
Total					2,999,933.85

Branch Terms:

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES UPON THIRTY (30) CALENDAR DAYS' NOTICE TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>



City Council Meeting

Item Number: 6
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Regina Stephenson, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC., FOR THE ANALYSIS AND DESIGN FOR THE REPLACEMENT OF THE WATER SOURCE FOR THE MIDLAND INTERNATIONAL AIR AND SPACE PORT WATER SYSTEM FOR THE UTILITIES DEPARTMENT FOR A COST OF \$323,296.00; AND APPROVING \$64,660.00 FOR CONTINGENCIES (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a professional services agreement to Freese and Nichols, Inc. for the analysis and design for the replacement of the water source for the Midland International Air & Space Port water system for a cost of \$323,296.00 plus \$64,660.00 in contingencies for a total amount not to exceed of \$387,956.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the Utilities Fund and are hereby transferred to a capital project in Fund 305.

Discussion:

Resolution 2020-091 approved the selection of six (6) engineering firms to provide professional services for On-call Engineering Services. Freese and Nichols, Inc. was one of the engineering firms that was selected. Staff recommends awarding a professional services agreement to Freese and Nichols, Inc. for the analysis and design for the replacement of the water source for the Midland International Air & Space Port water system. Please see the attached memo from

Carl Craig, Utilities Director, for additional information.

Therefore, please consider a resolution awarding a professional services agreement to Freese and Nichols, Inc. for the analysis and design for the replacement of the water source for the Midland International Air & Space Port water system for a cost of \$323,296.00 plus \$64,660.00 in contingencies for a total amount not to exceed of \$387,956.00



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director

FROM: Carl Craig, PE, Utilities Director

SUBJECT: Consider a Resolution approving a contract with Freese and Nichols, Inc. for a Professional Service Agreement for the analysis and design for the replacement of the water source of the City of Midland International Airport water system

DATE: March 24, 2020

This project will analyze the ability to replace the water source at the International Airport water system from the current source (water wells around the airport) to the Tbar water source. This project will have Freese and Nicholas, Inc. an approved on call engineer (Resolution 2020-091) perform the task.

The water wells around the airport were installed in the 1930s by the army corps of engineers. The source serves the area around the airport and the airport for potable water. The groundwater has lowered to the point that some of the wells used to pull the water out no longer have the ability to provide water. The area also has two known ground plums of contamination that have not reached the groundwater but have started to migrate to the groundwater. The Tbar system has the capacity to serve this area with most infrastructure already in place. Freese and Nicholas will evaluate and design the needed changes to replace the water source under this agreement and assist with TCEQ regulations and procedures for this venture.

The scope of services is on an hourly basis with an amount of \$323,296 and a contingency of \$64,660 for a not to exceed amount of \$387,956. This will be paid for with Utilities Admin FY21 Operating Fund.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC., FOR THE ANALYSIS AND DESIGN FOR THE REPLACEMENT OF THE WATER SOURCE FOR THE MIDLAND INTERNATIONAL AIR AND SPACE PORT WATER SYSTEM FOR THE UTILITIES DEPARTMENT FOR A COST OF \$323,296.00; AND APPROVING \$64,660.00 FOR CONTINGENCIES

WHEREAS, the City Council approved Resolution No. 2020-091 selecting six engineering firms to provide professional services for engineering designs and studies on an as-needed basis; and

WHEREAS, the Utilities Department has selected Freese and Nichols, Inc., to provide analysis and design for the replacement of the water source for the Midland International Air and Space Port water system for the Utilities Department; and

WHEREAS, Freese and Nichols, Inc., has agreed to perform said professional services at a cost of \$323,296.00; and

WHEREAS, the City Council finds that Freese and Nichols, Inc., is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Freese and Nichols, Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Freese and Nichols, Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Freese and Nichols, Inc., as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

WHEREAS, the City Council finds it to be in the public interest to approve

\$64,660.00 for contingencies;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Freese and Nichols, Inc., for said professional services. A copy said agreement is attached hereto as Exhibit “1” and incorporated herein for all purposes.

SECTION TWO. That the sum of \$64,660.00 for contingencies is hereby approved for said agreement.

SECTION THREE. That funds are available in the Utilities Funds and are hereby transferred to a capital project in Fund 305.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Freese and Nichols, Inc., from funds available in the capital project in Fund 305 upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Carl Craigo, Utilities Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Exhibit "1"

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 7th day of October 2020, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Freese and Nichols, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform analysis and design for the replacement of the water source of the City of Midland International Air& Space Port water system.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".
2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed \$323,296.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from October 7, 2021 until the project is completed or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

Either Party may terminate this Agreement at will for no or any reason upon giving at least one-hundred eighty (180) days written notice. The parties to this Agreement understand and agree that it is in within either Party's discretion to cancel the Agreement during the term of the Agreement without penalty. Both Parties have no expectation and have received no guarantee that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of CITY; that COMPANY shall have exclusive control of and the exclusive right to control the details

of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. COMPANY shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

COMPANY shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00

covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY'S insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of CITY. CITY shall not be required to provide any insurance whatsoever pursuant to this Agreement.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF

COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XI. GOVERNMENTAL IMMUNITY

By executing this agreement CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

CITY'S approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES,

If to COMPANY: Freese and Nichols, INC.
4055 International Plaza
Fort Worth, TX 76109

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice

attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, COMPANY'S failure to comply with the requirements herein shall perpetually bar COMPANY'S claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

J. **PROMPT PAY ACT** - CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

K. **Compliance**. – Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. **Records Retention and Production of Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve

all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

N. **Public Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

O. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Agreement and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Freese and Nichols, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20____.

Notary Public, State of Texas

Exhibit A

July 22, 2020

Mr. Carl Craig, P.E.
Utilities Director, City of Midland
300 N. Loraine, Suite 520 (P.O. Box 1152)
Midland, TX 79702

Re: Proposal Request for Task Order FN – 01

Dear Carl:

Freese and Nichols, Inc. (FNI) is pleased to provide this proposal for the Preliminary Design and Hydraulic Analysis Report and Final Design of Task Order No. FN – 01. It is our understanding that the City is pursuing this project due to water quality and other system issues associated with nine wells that service the Airport Public Water System (PWS). The City has previously identified several possible courses of action associated with this system challenge. The City has requested FNI's assistance with evaluating and designing improvements necessary to merge the Airport PWS. The project will include the following:

- Alignment analysis for the connection on the south side of the Airport PWS to the City PWS as shown in Figure 1 taking in to account the following:
 - Easement requirements (if any),
 - Traffic and other resident impacts during construction,
 - System down time with special attention given to large industrial users,
 - Regulatory considerations (to include incorporating the Airport PWS and the change from chlorine to chloramine).
- Recommissioning evaluation and rehabilitation recommendations for the West Pump Station (if required) as shown in Figure 2.
- System hydraulic analysis including:
 - a review and update the City's water model to reflect the proposed utility improvements,
 - fire flow analysis,
 - Max day EPS and water age modeling.
- Final design of proposed utility improvements of 10,500 LF of 12" WL loop along Airport PWS southern edge to complete loop.
 - Final design will also include a connection design on the northern edge of the Airport PWS system to reconnect the system with the T-Bar system.
- Bid, award and construction general representation.



FNI will summarize the above engineering results and recommendations in a route study memorandum which will include FNI's recommendations as well as a preliminary design schedule and planning level opinion of probable construction cost. After final approval of the alignment FNI will release the surveyor and begin design. FNI will seal the plans and assist the City during the bid and award phase of the project. Once the construction contract is awarded, FNI will serve the City in the construction phase of the project providing general representation to review submittals, assist with review of pay applications and help with any field issues that may arise to ensure. Resident project representative (RPR) and inspection services have not been included in this scope of work, but FNI has staff ready and available to serve the City in that capacity if the City requests that service be incorporated in to the scope of work.

Below is a summary of the proposed lump sum compensation. We have broken down by task to help the City understand how the effort breaks down.

City of Midland Airport Water System Connection and Utility Improvements	
Task 1 – Project Management	\$ 21,860
Task 2 – Route Study, Prelim Design and Hydraulic Analysis	\$ 52,966
Task 3 – Final Design (60,90,100%)	\$ 76,295
Task 4a – Bid and Award	\$ 16,455
Task 4b – General Representation	\$ 46,170
Task 5 – Topographic Survey and SUE	\$ 76,200
Task 6 – Environmental Desktop Analysis	\$ 10,500
Task 7 – Regulatory Compliance Support	\$ 22,850
Project Total	\$ 323,296

Sincerely,

Nick Lester, P.E.
Vice President

Attachments:

Proposed Scope for Utilities Task Order No. FN – 01

Figure 1 – Airport PWS Connection

Figure 2 – West Ground Storage Tank Connection

TASK ORDER NO. FN - 01

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, "ENGINEER" is expanded to include any sub-consultant, including surveyor, employed or contracted by the ENGINEER.

Below is a breakdown of the task necessary in both basic and special services needed for the development of a Route Study Memorandum and Final Design of the utility improvements necessary for the connection between the Airport and City Water System.

WORK TO BE PERFORMED

BASIC SERVICES

- Task 1. Project Management
- Task 2. Route Study, Preliminary Design and Hydraulic Analysis Report
- Task 3. Final Design
- Task 4. Bid, Award and Construction General Representation
- Task 5. Topographic Survey and SUE

SPECIAL SERVICES

- Task 6. Environmental Desktop Analysis
- Task 7. Regulatory Compliance Support

PART 2.0 BASIC SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER:

The basic scope of services proposed for this project includes the following:

TASK 1. PROJECT MANAGEMENT

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team

- Lead, manage and direct ENGINEER team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Organize Comment Resolution Workshop after draft submittal
- Task and allocate team resources

1.2. Communications and Reporting

- Hold weekly project status calls between CITY and ENGINEER
- Prepare and submit monthly progress reports and invoices.
- Coordinate with other agencies and entities such as part of the feasibility research performed during the Route Study task of the project.
- Stakeholder Coordination

DELIVERABLES

- A. Meeting summaries with action items
- B. Monthly invoices
- C. Monthly progress reports

TASK 2. PRELIMINARY DESIGN AND HYDRAULIC ANALYSIS REPORT

ENGINEER will develop two route alternatives and evaluate those routes for the 10,500 LF of 12" WL shown on Figure 1: Airport PWS Connection based on the subtask detailed below and coordination with the CITY's Staff.

2.1. Route Study

- Conduct one site visit to evaluate up to two (2) routes for the connection pipeline.

- Evaluate the feasibility of the potential routes, design and construction schedule, and probable construction costs associated with each alternative.
- Evaluate the impact of new water transmission main on existing utilities, streets, highways, driveways, traffic, and determine route, appurtenances, and permanent and construction easement requirements.
- Evaluate the recommissioning of the West Pump Station. The evaluation will also include assistance in operational start up procedures to determine the feasibility of recommissioning the West Pump Station and provide recommendations as necessary for required rehabilitation work if required.
 - Design of rehabilitation improvements is not included as part of this contract.
- Prepare a preliminary alignment report with a schematic layout of up to two alternative water main alignments for the 12" WL shown in Figure 1 with appropriate exhibits to indicate the recommended alignment to CITY.
- Attend in person Review Workshop to discuss CITY Comments.
- Finalizing report incorporating CITY comments and provide analysis of the routes based on the following design parameters: transmission line hydraulics, pipe material alternatives, recommended permanent and temporary construction easement requirements, feasibility and impacts of water transmission line being within roadway, regulatory considerations, final design criteria, updated design and construction schedule, and the ENGINEER's opinions of probable construction costs for each route.

2.2. System Hydraulics Analysis

- Review and Update Water System Model: ENGINEER will perform a hydraulic model review of the existing model's construction, network connectivity, demand and diurnal pattern inputs, and operational controls. If necessary, ENGINEER will update the existing water model using the City's latest GIS data and record drawings of recently constructed improvements to update the water system model based on the City's available GIS data. ENGINEER will update pumping and storage facility data, as needed, in the model to represent the existing water system conditions. If necessary ENGINEER will install up to two (2) pressure recorders on hydrants in the vicinity of the Airport PWS connection points to confirm modeling results.
- Perform Maximum Day EPS Modeling of Existing System: ENGINEER will utilize the hydraulic water model to evaluate system performance and the impacts of adding the Airport PWS to the City PWS distribution system. This scenario will include the maximum day and hour demand conditions. ENGINEER will conduct EPS modeling of the existing water system for maximum day operating conditions to evaluate tank cycling, system pressures, and recommended waterline velocities and headloss gradients.
- Conduct Fire Flow Analysis for Existing System: ENGINEER will utilize water system model to conduct fire flow analysis under existing maximum day demands to identify

areas with less than adequate fire flow capacity and impacted by the addition of the Airport PWS to the City PWS distribution system. A minimum fire flow of 1,000 gpm will be used for analysis. The CITY will provide fire flow requirements for customers with required fire flows greater than 2,000 gpm, where available. Mapping of available fire flows will be overlaid on the existing water system mapping.

- Perform Water Age Modeling for Existing System: ENGINEER will conduct water age modeling for the existing water system for up to two different operational scenarios with the addition of the Airport PWS to the City PWS distribution system. ENGINEER will run the EPS water age model for adequate simulation duration to ensure a repeating pattern of water age. ENGINEER will use the EPS model to investigate potential operational modifications to reduce water age in areas of concern. ENGINEER will prepare large scale color-coded mapping showing the water age throughout the system.
- Prepare Technical Memorandum on Hydraulic Modeling and Performance Analysis: ENGINEER will prepare a technical memo documenting the assumptions utilized, and results of the hydraulic modeling for the Airport PWS addition to the City PWS. ENGINEER will provide the CITY with an electronic PDF of the draft technical memorandum. ENGINEER will address comments from the CITY and provide a final technical memorandum in PDF format. FNI will provide the CITY the GIS files and a copy of the hydraulic model for its records.

2.3. Well Abandonment Plan

- Evaluate path forward for the nine (9) existing groundwater wells in the current Airport PWS and provide recommendations to the CITY as to the best path forward for taking the wells offline. The evaluation will include discussion on the treatment concerns of combining a free chlorine and chloramine system as well as our recommendations for merging the Airport PWS with the City's chloramine system.
- Except for the identifying concerns associated with blending chloraminated and chlorinated waters in the distribution system, no other treatment considerations (i.e., arsenic, fluoride) are included in this scope of services.
- This evaluation will also include if flushing operations will be necessary as part of the incorporation of the Airport PWS.

DELIVERABLES

- A. Three copies of a Draft Report and Hydraulic Modeling TM for City Review
- B. Comment Log with resolution response for each comment
- C. Review Workshop Meeting Minutes and Sign-in Sheet
- D. Three copies of the revised Report and Hydraulic Modeling TM with Engineer's Seal

TASK 3. FINAL DESIGN

Upon approval of the final Alignment the ENGINEER will develop plans and specifications for the purpose of construction as detailed below and in coordination with the CITY's Staff.

3.1. Utility Improvements Design

- 10,500 Linear Feet of 12" Water line at 1:40 scale and design of connection to existing T-Bar System near the West GST and PS.
- Appurtenances for water line including blow-off valves, air release valves, in-line valves, and valve vaults.
- Engineer's Opinion of Probable Construction Cost (OPCC)
- Boring/Tunneling requirements.
- Connection to Existing Water lines.
- Identify limits or surface repair to include pavement, seeding and restoring existing contours
- Furnish CITY three (3) sets of copies of the contract documents at 60% and 90% completion marked "Preliminary" to obtain comments on the project. Present and review the documents in person with the CITY.
- Submit drawings, specifications, and Construction Contract Documents to the applicable federal and state agency(s) for approval, where required.
- Coordinate with effected franchise utility companies and water customers effected by any possible water shut down.

DELIVERABLES

- A. Three copies of the 60% Plan Set, OPCC, and list of technical specifications.
- B. Three copies of the 90% Plans and Full Specifications, Updated OPCC.
- C. Comment Log with resolution response for each comment for both submittals
- D. Review Workshop Meeting Minutes and Sign-in Sheet for both submittals
- E. Three copies of the 100% Construction Documents with Engineer's Seal for purposes of bidding.

TASK 4. Bid, Award and Construction General Representation

Upon completion of the design services and approval of "Final" drawings and specifications by CITY, ENGINEER will proceed with the performance of services as described below. ENGINEER will endeavor to protect CITY in providing these services however, it is understood that ENGINEER does not guarantee the Contractor's performance, nor is ENGINEER responsible for supervision of the Contractor's operation and employees. ENGINEER shall not be responsible

for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.:

If general conditions other than ENGINEER standards are used, the CITY agrees to include provisions in the construction contract documents that will require the construction contractor to include ENGINEER and their sub consultants on this Project to be listed as an additional insured on Contractor's insurance policies.

- 4.1. Assist CITY in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in ENGINEER's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for CITY to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by CITY.
- 4.2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.
- 4.3. Maintain information on entities that have been issue a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
- 4.4. Assist CITY by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
- 4.5. At CITY request, ENGINEER will assist CITY in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by CITY. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.
- 4.6. Assist CITY in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the CITY and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide CITY with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.
- 4.7. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.
- 4.8. Assist CITY in conducting preconstruction conference(s) with the Contractor(s) and review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract.

- 4.9. Establish communication procedures with the CITY and contractor.
- 4.10. Review contractor's submittals (up to 20), including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. As well as review of up to 5 Operations and Maintenance Manuals.
- 4.11. Based on ENGINEER's observations as an experienced and qualified design ENGINEER and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that ENGINEER recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- 4.12. Attend (1) construction coordination meeting every month (as distinguished from the continuous services of a Resident Project Representative), with a maximum of twelve (12) construction coordination meeting with up to four (4) being in person with a site visit to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort ENGINEER will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an additional service.
- 4.13. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- 4.14. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the CITY to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the CITY. Documentation of field orders, where cost to CITY is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the CITY are an additional service. Substitutions of materials or equipment or design modifications requested by the CITY are an additional service.
- 4.15. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation.
- 4.16. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the CITY in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to

the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.

- 4.17. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Two (2) sets of prints of "Record Drawings" shall be provided by ENGINEER to CITY.

TASK 5. TOPOGRAPHIC SURVEY AND SUE

ENGINEER will perform design survey of the approved waterline alignment, including 1-foot contours, surface features, property lines, manholes, vaults, valves, flow lines, overhead electrical lines, streets, driveways, drainage facilities, fences, utility flagging and marking provided by DIG-TESS, and any potholing performed by the CITY or utility owner:

5.1. Topographic Survey

- Contact the State One-Call Utility Locate service (DIG TESS) to initiate franchise utilities to locate their infrastructure in the vicinity of the proposed project. Perform field surveys to tie the horizontal location of these facilities.
- Provide survey control along the pipeline route in a coordinate system and vertical datum as approved by the CITY, and compatible with other pipeline projects.
- Provide topographic survey for a 75-foot width along the pipeline routes for up to 10,500 linear feet and survey of approximately 9,000 square feet at the T-Bar connection location. Topographic survey will include all property monuments, apparent easements, property lines, right-of-way lines, fences, pavement, signs, utility markers, indicate all trees four (4) inches in diameter or larger and the limits of landscaping within the 50-foot wide strip along the proposed pipeline route. Topographic survey will not include individual tree surveys
- Provide survey ties to major utility lines, as located by the CITY's utility.

5.2. Subsurface Utility Engineering (SUE)

- Perform review of information collected by the surveyor to approximate horizontal location of subsurface facilities.
- Based on the survey information perform Level B SUE on 500 linear feet of the alignment to identify possible subsurface utility conflicts more accurately.
 - Level B SUE Involves designating the type and size of the underground utilities, for example, by markings provided through an 811 call or by contacting an individual utility company. This data is added to the data collected from the survey. The designated utilities are then surveyed and added to the drawing.
- Based on the conflicts identified by the level B SUE select four (4) number of utilities to perform Level A SUE to verify the exact vertical and horizontal position at the location our proposed alignment crosses that utility.
 - Level A SUE involves physically locating the actual utility – often by ‘potholing.’ Once the utility is potholed it is located horizontally and vertically by survey measurements.

PART 3.0 SPECIAL SCOPE OF SERVICES

The special scope of services proposed for this project includes the following:

TASK 6. ENVIRONMENTAL

ENGINEER will perform the environmental services listed below:

6.1. Gather and Review Existing Information

- ENGINEER will compile readily available existing information and a Geographic Information System (GIS) database of potential environmental constraints for the proposed water system connection pipeline alignment will be created. The data collected will include, but is not limited to: potential waters of the U.S (streams, water bodies, and wetlands), cultural resources sites, hazardous materials sites, potential habitats for federally listed threatened and endangered species, municipal, state, and national parks, General Land Office (GLO) owned land and associated easements, University Lands and associated easements, existing oil and gas wells, Texas Parks and Wildlife Department (TPWD) Wildlife Management Areas, and National Wilderness Preservation System areas.
- ENGINEER will use the GIS database to design a water pipeline alignment that avoids and/or minimizes impacts to known environmental resources and constraints.

6.2. Conduct Pedestrian Survey

- ENGINEER will conduct a pedestrian survey to observe and document existing environmental conditions and assess potential permitting requirements associated with the proposed project. The presence and locations of potential waters of the U.S., including wetlands; potential threatened/endangered species habitat; and vegetation cover types will be identified within the proposed pipeline alignment easement.
- This task does not include conducting detailed wetland delineations necessary for the preparation and submittal of a Pre-Construction Notification (PCN) to the U.S. Army Corps of Engineers (USACE).

6.3. Coordinate with the Texas Historical Commission

- Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Because the proposed project is likely to exceed one or both of these thresholds, coordination with THC is expected to be required.
- ENGINEER will draft a consultation letter to the THC for the City's review and comment. ENGINEER will incorporate the City's comments and submit the consultation letter to the THC via their eTRAC online submittal system. Any follow up studies requested by the THC are not included in this scope of services but can be provided upon written authorization.

6.4. Prepare Technical Memorandum

- ENGINEER will prepare a memo documenting existing site conditions, including presence of potential jurisdictional waters of the U.S. (including wetlands), threatened and endangered species habitats, and vegetation cover types. Recommendations for Clean Water Act (CWA) Section 404 permitting, if required, will be included.
- The draft technical memorandum will be submitted by ENGINEER to the City for review and comment. After incorporating the City's comments into the document, ENGINEER will submit a final technical memorandum to the City.

DELIVERABLES

- A. Draft letter for City submitted to THC
- B. Final letter for THC
- C. Draft Memorandum documenting Section 404 Recommendations
- D. Final Memorandum documenting Section 404 Recommendations

TASK 7. REGULATORY COMPLIANCE SUPPORT

ENGINEER will assist the CITY with TCEQ coordination on the task listed below:

7.1. Plan Submittal to TCEQ Water Plan Review Team

- ENGINEER will submit sealed plans on behalf of the CITY to TCEQ Water Review Team.
- ENGINEER will coordinate with the TCEQ reviewer as necessary to answer questions about the construction documents in order to receive construction approval of the plans from TCEQ.

7.2. Assistance with the merge of the Airport and City PWS

- Assist the City in compiling the necessary paperwork for the abandonment of the wells.
- Assist the city in preparation of the application to TCEQ to merge the Airport PWS and City of Midland PWS.

7.3. TCEQ Interconnection Report (If Required) in accordance with TCEQ checklist.

PART 4.0 ADDITIONAL SERVICES

Additional Services not included in the existing Scope of Services – CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

1. Any treatment design services required to integrate the wells as part of the merged public water system.
2. Development of ROW and easement documents, which includes survey/assistance for acquisition.
3. GIS mapping services or assistance with these services.
4. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
5. Providing renderings, model and mock-ups requested by the CITY.
6. Making revisions to drawings, reports or other documents when such revisions are 1) consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of ENGINEER.
7. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
8. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
9. Preparing data and reports for assistance to CITY in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
10. Furnishing the services of a Resident Project Representative to act as CITY's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by ENGINEER in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, ENGINEER shall endeavor to provide further protection for CITY against defects and deficiencies in the work.
11. If CITY provides personnel to support the activities of the Resident Project Representative who is ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. CITY agrees that whenever ENGINEER informs him in writing that any such personnel provided by the CITY are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.
12. Assisting CITY in claims disputes with Contractor(s).
13. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
14. Assisting CITY in claims disputes with Contractor(s).

15. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
16. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this CONTRACT. Such services, if any, shall be furnished by ENGINEER on a fee basis negotiated by the respective parties outside of and in addition to this CONTRACT.
17. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
18. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
19. Services required to resolve bid protests or to rebid the projects for any reason.
20. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
21. Providing services after the completion of the construction phase not specifically listed in this CONTRACT.
22. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
23. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
24. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this ENGINEER services agreement.
25. Provide follow-up ENGINEER services during Contractor's warranty period.
26. Services related to development of the CITY's project financing and/or budget.
27. Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
28. Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
29. Surveying or SUE services other than those stated above.
30. Preparation of FEMA (CLOMR or LOMR) submittals.
31. Design of sanitary sewer extension, including plan and profile sheets and construction detail sheets.
32. Services related to public outreach, public meetings, or meetings with affected property owners.
33. Development of ENGINEER Guide Specifications to supplement City Technical Specifications

34. Prepare Preliminary Jurisdictional Determination Report.
35. Prepare Nationwide Permit (NWP) Pre-construction Notification (PCN).
36. Application for an Individual Section 404 Permit.
37. Phase I Environmental Site Assessment.
38. Archeological/cultural resources survey.
39. Coordination to conduct the archeological/cultural resources survey.
40. Presence/absence surveys for federally listed threatened/endangered species.
41. Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.
42. Application for General Land Office easements.
43. Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
44. Environmental documentation as follows:
 - Preparation of Environmental Assessment or other NEPA document
 - Preparation of a Section 404 permit application, a Pre-construction Notification (PCN), a request for a Jurisdictional Determination (JD), or other submittal to the USACE
 - Presence/absence surveys for federally listed threatened/endangered species
 - Phase I Environmental Site Assessment
 - Preparation of a Storm Water Pollution Prevention Plan (SWPPP)
 - Other environmental services not specifically described under BASIC/SPECIAL SERVICES of this scope

PART 5.0 PERIODS OF SERVICE:

TIME OF COMPLETION: ENGINEER is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services within time frames listed below.

- Draft Preliminary Design and Hydraulic Analysis Report submitted 75 days from Notice to Proceed
 - Submit Final Preliminary Design and Hydraulic Analysis Report 20 days after receiving comments from the CITY.
- 60% Design Documents submitted 120 days after receiving alignment approval from the CITY.
 - Submit 90% Design Documents 90 days after receiving comments from the CITY on the 60% Submittal.
 - Submit Sealed Contract Documents 45 days after receiving comments from the CITY on the 90% Submittal.

If ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to ENGINEER, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

PART 6.0 COMPENSATION:

Below is a summary of the proposed lump sum compensation. We have broken the fee down by task to help the City understand how the effort breaks down.

City of Midland Airport Water System Connection and Utility Improvements	
Task 1 – Project Management	\$ 21,860
Task 2 – Route Study, Prelim Design and Hydraulic Analysis	\$ 52,966
Task 3 – Final Design (60,90,100%)	\$ 76,295
Task 4a – Bid and Award	\$ 16,455
Task 4b – General Representation	\$ 46,170
Task 5 – Topographic Survey and SUE	\$ 76,200
Task 6 – Environmental Desktop Analysis	\$ 10,500
Task 7 – Regulatory Compliance Support	\$ 22,850
Project Total	\$ 323,296
Contingency 20%	\$ 64,660

PART 7.0 CITY'S RESPONSIBILITIES:

City shall perform the following in a timely manner so as not to delay the services of FNI:

- Provide meeting space and coordinate equipment needs, room set up, and logistics for meetings.
- Designate in writing a person to act as City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- Examine and provide prompt feedback on all submittals, draft reports, and other documents presented by FNI within a reasonable time so as not to delay the services of FNI.

- Furnish, or direct FNI to provide, Additional Services as stipulated in Part 4.0, of this Agreement or other services as required.
- Bear all costs incident to compliance with the requirements of this Part 7.0.

PART 8.0 OTHER:

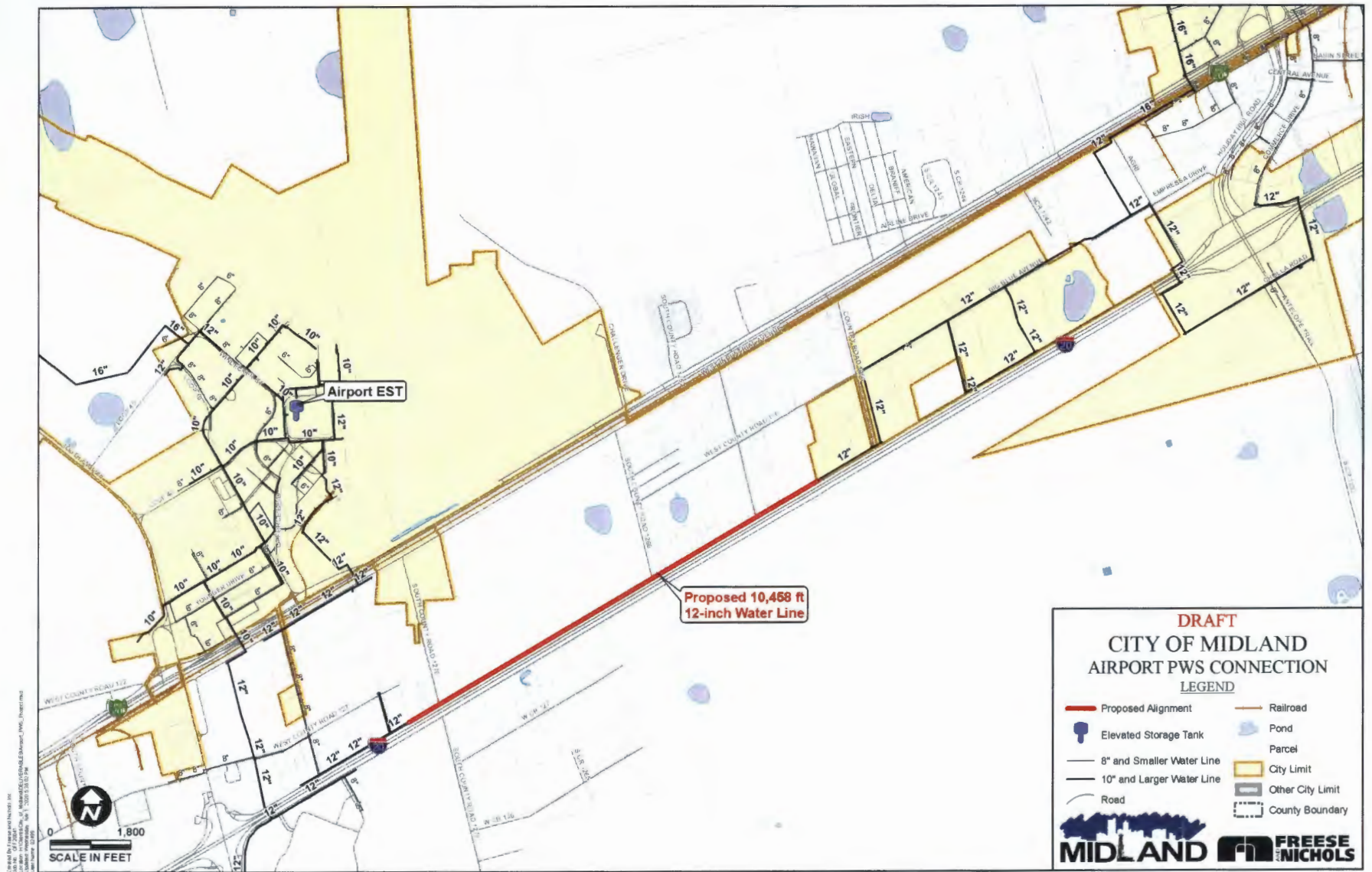
DESIGNATED REPRESENTATIVES: FNI and CITY designate the following representatives:

CLIENT's Designated Representative – Carl Craigo, PE, Utilities Director, 300 N. Loraine Street, Midland Texas 79701; Phone: 432-685-7261; E-mail: ccraigo@midlandtexas.gov

CLIENT's Accounting Representative -

FNI's Project Manager – Aaron Conine, 4055 International Plaza, Suite 200, Fort Worth, TX 76109;
Phone: 817-735-7469; E-mail: aaron.conine@freese.com

FNI's Accounting Representative – Sharon James, 4055 International Plaza, Suite 200, Fort Worth, TX 76109; Phone: 817-735-7298; E-mail: sharon.james@freese.com



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 7th day of October 2020, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Freese and Nichols, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform analysis and design for the replacement of the water source of the City of Midland International Air& Space Port water system.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".
2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed \$323,296.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from October 7, 2021 until the project is completed or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

Either Party may terminate this Agreement at will for no or any reason upon giving at least one-hundred eighty (180) days written notice. The parties to this Agreement understand and agree that it is in within either Party's discretion to cancel the Agreement during the term of the Agreement without penalty. Both Parties have no expectation and have received no guarantee that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of CITY; that COMPANY shall have exclusive control of and the exclusive right to control the details

of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. COMPANY shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

COMPANY shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00

covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY'S insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of CITY. CITY shall not be required to provide any insurance whatsoever pursuant to this Agreement.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF

COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XI. GOVERNMENTAL IMMUNITY

By executing this agreement CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

CITY'S approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES,

If to COMPANY: Freese and Nichols, INC.
4055 International Plaza
Fort Worth, TX 76109

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice

attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, COMPANY'S failure to comply with the requirements herein shall perpetually bar COMPANY'S claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

J. **PROMPT PAY ACT** - CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

K. **Compliance**. – Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. **Records Retention and Production of Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve

all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

N. **Public Information.** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

O. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Agreement and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Freese and Nichols, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20____.

Notary Public, State of Texas

PACKET

6.80
Page 10 of 10

October 6, 2020

Exhibit A

July 22, 2020

Mr. Carl Craig, P.E.
Utilities Director, City of Midland
300 N. Loraine, Suite 520 (P.O. Box 1152)
Midland, TX 79702

Re: Proposal Request for Task Order FN – 01

Dear Carl:

Freese and Nichols, Inc. (FNI) is pleased to provide this proposal for the Preliminary Design and Hydraulic Analysis Report and Final Design of Task Order No. FN – 01. It is our understanding that the City is pursuing this project due to water quality and other system issues associated with nine wells that service the Airport Public Water System (PWS). The City has previously identified several possible courses of action associated with this system challenge. The City has requested FNI's assistance with evaluating and designing improvements necessary to merge the Airport PWS. The project will include the following:

- Alignment analysis for the connection on the south side of the Airport PWS to the City PWS as shown in Figure 1 taking in to account the following:
 - Easement requirements (if any),
 - Traffic and other resident impacts during construction,
 - System down time with special attention given to large industrial users,
 - Regulatory considerations (to include incorporating the Airport PWS and the change from chlorine to chloramine).
- Recommissioning evaluation and rehabilitation recommendations for the West Pump Station (if required) as shown in Figure 2.
- System hydraulic analysis including:
 - a review and update the City's water model to reflect the proposed utility improvements,
 - fire flow analysis,
 - Max day EPS and water age modeling.
- Final design of proposed utility improvements of 10,500 LF of 12" WL loop along Airport PWS southern edge to complete loop.
 - Final design will also include a connection design on the northern edge of the Airport PWS system to reconnect the system with the T-Bar system.
- Bid, award and construction general representation.

FNI will summarize the above engineering results and recommendations in a route study memorandum which will include FNI's recommendations as well as a preliminary design schedule and planning level opinion of probable construction cost. After final approval of the alignment FNI will release the surveyor and begin design. FNI will seal the plans and assist the City during the bid and award phase of the project. Once the construction contract is awarded, FNI will serve the City in the construction phase of the project providing general representation to review submittals, assist with review of pay applications and help with any field issues that may arise to ensure. Resident project representative (RPR) and inspection services have not been included in this scope of work, but FNI has staff ready and available to serve the City in that capacity if the City requests that service be incorporated in to the scope of work.

Below is a summary of the proposed lump sum compensation. We have broken down by task to help the City understand how the effort breaks down.

City of Midland Airport Water System Connection and Utility Improvements	
Task 1 – Project Management	\$ 21,860
Task 2 – Route Study, Prelim Design and Hydraulic Analysis	\$ 52,966
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Task 5 – Topographic Survey and SUE	\$ 76,200
Task 6 – Environmental Desktop Analysis	\$ 10,500
Task 7 – Regulatory Compliance Support	\$ 22,850
Project Total	\$ 323,296

Sincerely,

A handwritten signature in blue ink that reads 'Nick Lester'.

Nick Lester, P.E.
Vice President

Attachments:

Proposed Scope for Utilities Task Order No. FN – 01
Figure 1 – Airport PWS Connection
Figure 2 – West Ground Storage Tank Connection

TASK ORDER NO. FN - 01

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, “ENGINEER” is expanded to include any sub-consultant, including surveyor, employed or contracted by the ENGINEER.

Below is a breakdown of the task necessary in both basic and special services needed for the development of a Route Study Memorandum and Final Design of the utility improvements necessary for the connection between the Airport and City Water System.

WORK TO BE PERFORMED

BASIC SERVICES

Task 1. Project Management

Task 2. Route Study, Preliminary Design and Hydraulic Analysis Report

Task 3. Final Design

Task 4. Bid, Award and Construction General Representation

Task 5. Topographic Survey and SUE

SPECIAL SERVICES

Task 6. Environmental Desktop Analysis

Task 7. Regulatory Compliance Support

PART 2.0 BASIC SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER:

The basic scope of services proposed for this project includes the following:

TASK 1. PROJECT MANAGEMENT

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team

- Lead, manage and direct ENGINEER team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Organize Comment Resolution Workshop after draft submittal
- Task and allocate team resources

1.2. Communications and Reporting

- Hold weekly project status calls between CITY and ENGINEER
- Prepare and submit monthly progress reports and invoices.
- Coordinate with other agencies and entities such as part of the feasibility research performed during the Route Study task of the project.
- Stakeholder Coordination

DELIVERABLES

- A. Meeting summaries with action items
- B. Monthly invoices
- C. Monthly progress reports

TASK 2. PRELIMINARY DESIGN AND HYDRAULIC ANALYSIS REPORT

ENGINEER will develop two route alternatives and evaluate those routes for the 10,500 LF of 12" WL shown on Figure 1: Airport PWS Connection based on the subtask detailed below and coordination with the CITY's Staff.

2.1. Route Study

- Conduct one site visit to evaluate up to two (2) routes for the connection pipeline.

- Evaluate the feasibility of the potential routes, design and construction schedule, and probable construction costs associated with each alternative.
- Evaluate the impact of new water transmission main on existing utilities, streets, highways, driveways, traffic, and determine route, appurtenances, and permanent and construction easement requirements.
- Evaluate the recommissioning of the West Pump Station. The evaluation will also include assistance in operational start up procedures to determine the feasibility of recommissioning the West Pump Station and provide recommendations as necessary for required rehabilitation work if required.
 - Design of rehabilitation improvements is not included as part of this contract.
- Prepare a preliminary alignment report with a schematic layout of up to two alternative water main alignments for the 12" WL shown in Figure 1 with appropriate exhibits to indicate the recommended alignment to CITY.
- Attend in person Review Workshop to discuss CITY Comments.
- Finalizing report incorporating CITY comments and provide analysis of the routes based on the following design parameters: transmission line hydraulics, pipe material alternatives, recommended permanent and temporary construction easement requirements, feasibility and impacts of water transmission line being within roadway, regulatory considerations, final design criteria, updated design and construction schedule, and the ENGINEER's opinions of probable construction costs for each route.

2.2. System Hydraulics Analysis

- Review and Update Water System Model: ENGINEER will perform a hydraulic model review of the existing model's construction, network connectivity, demand and diurnal pattern inputs, and operational controls. If necessary, ENGINEER will update the existing water model using the City's latest GIS data and record drawings of recently constructed improvements to update the water system model based on the City's available GIS data. ENGINEER will update pumping and storage facility data, as needed, in the model to represent the existing water system conditions. If necessary ENGINEER will install up to two (2) pressure recorders on hydrants in the vicinity of the Airport PWS connection points to confirm modeling results.
- Perform Maximum Day EPS Modeling of Existing System: ENGINEER will utilize the hydraulic water model to evaluate system performance and the impacts of adding the Airport PWS to the City PWS distribution system. This scenario will include the maximum day and hour demand conditions. ENGINEER will conduct EPS modeling of the existing water system for maximum day operating conditions to evaluate tank cycling, system pressures, and recommended waterline velocities and headloss gradients.
- Conduct Fire Flow Analysis for Existing System: ENGINEER will utilize water system model to conduct fire flow analysis under existing maximum day demands to identify

areas with less than adequate fire flow capacity and impacted by the addition of the Airport PWS to the City PWS distribution system. A minimum fire flow of 1,000 gpm will be used for analysis. The CITY will provide fire flow requirements for customers with required fire flows greater than 2,000 gpm, where available. Mapping of available fire flows will be overlaid on the existing water system mapping.

- Perform Water Age Modeling for Existing System: ENGINEER will conduct water age modeling for the existing water system for up to two different operational scenarios with the addition of the Airport PWS to the City PWS distribution system. ENGINEER will run the EPS water age model for adequate simulation duration to ensure a repeating pattern of water age. ENGINEER will use the EPS model to investigate potential operational modifications to reduce water age in areas of concern. ENGINEER will prepare large scale color-coded mapping showing the water age throughout the system.
- Prepare Technical Memorandum on Hydraulic Modeling and Performance Analysis: ENGINEER will prepare a technical memo documenting the assumptions utilized, and results of the hydraulic modeling for the Airport PWS addition to the City PWS. ENGINEER will provide the CITY with an electronic PDF of the draft technical memorandum. ENGINEER will address comments from the CITY and provide a final technical memorandum in PDF format. FNI will provide the CITY the GIS files and a copy of the hydraulic model for its records.

2.3. Well Abandonment Plan

- Evaluate path forward for the nine (9) existing groundwater wells in the current Airport PWS and provide recommendations to the CITY as to the best path forward for taking the wells offline. The evaluation will include discussion on the treatment concerns of combining a free chlorine and chloramine system as well as our recommendations for merging the Airport PWS with the City's chloramine system.
- Except for the identifying concerns associated with blending chloraminated and chlorinated waters in the distribution system, no other treatment considerations (i.e., arsenic, fluoride) are included in this scope of services.
- This evaluation will also include if flushing operations will be necessary as part of the incorporation of the Airport PWS.

DELIVERABLES

- A. Three copies of a Draft Report and Hydraulic Modeling TM for City Review
- B. Comment Log with resolution response for each comment
- C. Review Workshop Meeting Minutes and Sign-in Sheet
- D. Three copies of the revised Report and Hydraulic Modeling TM with Engineer's Seal

TASK 3. FINAL DESIGN

Upon approval of the final Alignment the ENGINEER will develop plans and specifications for the purpose of construction as detailed below and in coordination with the CITY's Staff.

3.1. Utility Improvements Design

- 10,500 Linear Feet of 12" Water line at 1:40 scale and design of connection to existing T-Bar System near the West GST and PS.
- Appurtenances for water line including blow-off valves, air release valves, in-line valves, and valve vaults.
- Engineer's Opinion of Probable Construction Cost (OPCC)
- Boring/Tunneling requirements.
- Connection to Existing Water lines.
- Identify limits or surface repair to include pavement, seeding and restoring existing contours
- Furnish CITY three (3) sets of copies of the contract documents at 60% and 90% completion marked "Preliminary" to obtain comments on the project. Present and review the documents in person with the CITY.
- Submit drawings, specifications, and Construction Contract Documents to the applicable federal and state agency(s) for approval, where required.
- Coordinate with effected franchise utility companies and water customers effected by any possible water shut down.

DELIVERABLES

- A. Three copies of the 60% Plan Set, OPCC, and list of technical specifications.
- B. Three copies of the 90% Plans and Full Specifications, Updated OPCC.
- C. Comment Log with resolution response for each comment for both submittals
- D. Review Workshop Meeting Minutes and Sign-in Sheet for both submittals
- E. Three copies of the 100% Construction Documents with Engineer's Seal for purposes of bidding.

TASK 4. Bid, Award and Construction General Representation

Upon completion of the design services and approval of "Final" drawings and specifications by CITY, ENGINEER will proceed with the performance of services as described below. ENGINEER will endeavor to protect CITY in providing these services however, it is understood that ENGINEER does not guarantee the Contractor's performance, nor is ENGINEER responsible for supervision of the Contractor's operation and employees. ENGINEER shall not be responsible

for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.:

If general conditions other than ENGINEER standards are used, the CITY agrees to include provisions in the construction contract documents that will require the construction contractor to include ENGINEER and their sub consultants on this Project to be listed as an additional insured on Contractor's insurance policies.

- 4.1. Assist CITY in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in ENGINEER's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for CITY to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by CITY.
- 4.2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.
- 4.3. Maintain information on entities that have been issue a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
- 4.4. Assist CITY by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
- 4.5. At CITY request, ENGINEER will assist CITY in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by CITY. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.
- 4.6. Assist CITY in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the CITY and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide CITY with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.
- 4.7. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.
- 4.8. Assist CITY in conducting preconstruction conference(s) with the Contractor(s) and review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract.

- 4.9. Establish communication procedures with the CITY and contractor.
- 4.10. Review contractor's submittals (up to 20), including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. As well as review of up to 5 Operations and Maintenance Manuals.
- 4.11. Based on ENGINEER's observations as an experienced and qualified design ENGINEER and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that ENGINEER recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- 4.12. Attend (1) construction coordination meeting every month (as distinguished from the continuous services of a Resident Project Representative), with a maximum of twelve (12) construction coordination meeting with up to four (4) being in person with a site visit to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort ENGINEER will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an additional service.
- 4.13. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- 4.14. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the CITY to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the CITY. Documentation of field orders, where cost to CITY is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the CITY are an additional service. Substitutions of materials or equipment or design modifications requested by the CITY are an additional service.
- 4.15. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation.
- 4.16. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the CITY in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to

the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.

- 4.17. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Two (2) sets of prints of "Record Drawings" shall be provided by ENGINEER to CITY.

TASK 5. TOPOGRAPHIC SURVEY AND SUE

ENGINEER will perform design survey of the approved waterline alignment, including 1-foot contours, surface features, property lines, manholes, vaults, valves, flow lines, overhead electrical lines, streets, driveways, drainage facilities, fences, utility flagging and marking provided by DIG-TESS, and any potholing performed by the CITY or utility owner:

5.1. Topographic Survey

- Contact the State One-Call Utility Locate service (DIG TESS) to initiate franchise utilities to locate their infrastructure in the vicinity of the proposed project. Perform field surveys to tie the horizontal location of these facilities.
- Provide survey control along the pipeline route in a coordinate system and vertical datum as approved by the CITY, and compatible with other pipeline projects.
- Provide topographic survey for a 75-foot width along the pipeline routes for up to 10,500 linear feet and survey of approximately 9,000 square feet at the T-Bar connection location. Topographic survey will include all property monuments, apparent easements, property lines, right-of-way lines, fences, pavement, signs, utility markers, indicate all trees four (4) inches in diameter or larger and the limits of landscaping within the 50-foot wide strip along the proposed pipeline route. Topographic survey will not include individual tree surveys
- Provide survey ties to major utility lines, as located by the CITY's utility.

5.2. Subsurface Utility Engineering (SUE)

- Perform review of information collected by the surveyor to approximate horizontal location of subsurface facilities.
- Based on the survey information perform Level B SUE on 500 linear feet of the alignment to identify possible subsurface utility conflicts more accurately.
 - Level B SUE Involves designating the type and size of the underground utilities, for example, by markings provided through an 811 call or by contacting an individual utility company. This data is added to the data collected from the survey. The designated utilities are then surveyed and added to the drawing.
- Based on the conflicts identified by the level B SUE select four (4) number of utilities to perform Level A SUE to verify the exact vertical and horizontal position at the location our proposed alignment crosses that utility.
 - Level A SUE involves physically locating the actual utility – often by ‘potholing.’ Once the utility is potholed it is located horizontally and vertically by survey measurements.

PART 3.0 SPECIAL SCOPE OF SERVICES

The special scope of services proposed for this project includes the following:

TASK 6. ENVIRONMENTAL

ENGINEER will perform the environmental services listed below:

6.1. Gather and Review Existing Information

- ENGINEER will compile readily available existing information and a Geographic Information System (GIS) database of potential environmental constraints for the proposed water system connection pipeline alignment will be created. The data collected will include, but is not limited to: potential waters of the U.S (streams, water bodies, and wetlands), cultural resources sites, hazardous materials sites, potential habitats for federally listed threatened and endangered species, municipal, state, and national parks, General Land Office (GLO) owned land and associated easements, University Lands and associated easements, existing oil and gas wells, Texas Parks and Wildlife Department (TPWD) Wildlife Management Areas, and National Wilderness Preservation System areas.
- ENGINEER will use the GIS database to design a water pipeline alignment that avoids and/or minimizes impacts to known environmental resources and constraints.

6.2. Conduct Pedestrian Survey

- ENGINEER will conduct a pedestrian survey to observe and document existing environmental conditions and assess potential permitting requirements associated with the proposed project. The presence and locations of potential waters of the U.S., including wetlands; potential threatened/endangered species habitat; and vegetation cover types will be identified within the proposed pipeline alignment easement.
- This task does not include conducting detailed wetland delineations necessary for the preparation and submittal of a Pre-Construction Notification (PCN) to the U.S. Army Corps of Engineers (USACE).

6.3. Coordinate with the Texas Historical Commission

- Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Because the proposed project is likely to exceed one or both of these thresholds, coordination with THC is expected to be required.
- ENGINEER will draft a consultation letter to the THC for the City's review and comment. ENGINEER will incorporate the City's comments and submit the consultation letter to the THC via their eTRAC online submittal system. Any follow up studies requested by the THC are not included in this scope of services but can be provided upon written authorization.

6.4. Prepare Technical Memorandum

- ENGINEER will prepare a memo documenting existing site conditions, including presence of potential jurisdictional waters of the U.S. (including wetlands), threatened and endangered species habitats, and vegetation cover types. Recommendations for Clean Water Act (CWA) Section 404 permitting, if required, will be included.
- The draft technical memorandum will be submitted by ENGINEER to the City for review and comment. After incorporating the City's comments into the document, ENGINEER will submit a final technical memorandum to the City.

DELIVERABLES

- A. Draft letter for City submitted to THC
- B. Final letter for THC
- C. Draft Memorandum documenting Section 404 Recommendations
- D. Final Memorandum documenting Section 404 Recommendations

TASK 7. REGULATORY COMPLIANCE SUPPORT

ENGINEER will assist the CITY with TCEQ coordination on the task listed below:

7.1. Plan Submittal to TCEQ Water Plan Review Team

- ENGINEER will submit sealed plans on behalf of the CITY to TCEQ Water Review Team.
- ENGINEER will coordinate with the TCEQ reviewer as necessary to answer questions about the construction documents in order to receive construction approval of the plans from TCEQ.

7.2. Assistance with the merge of the Airport and City PWS

- Assist the City in compiling the necessary paperwork for the abandonment of the wells.
- Assist the city in preparation of the application to TCEQ to merge the Airport PWS and City of Midland PWS.

7.3. TCEQ Interconnection Report (If Required) in accordance with TCEQ checklist.

PART 4.0 ADDITIONAL SERVICES

Additional Services not included in the existing Scope of Services – CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

1. Any treatment design services required to integrate the wells as part of the merged public water system.
2. Development of ROW and easement documents, which includes survey/assistance for acquisition.
3. GIS mapping services or assistance with these services.
4. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
5. Providing renderings, model and mock-ups requested by the CITY.
6. Making revisions to drawings, reports or other documents when such revisions are 1) consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of ENGINEER.
7. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
8. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
9. Preparing data and reports for assistance to CITY in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
10. Furnishing the services of a Resident Project Representative to act as CITY's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by ENGINEER in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, ENGINEER shall endeavor to provide further protection for CITY against defects and deficiencies in the work.
11. If CITY provides personnel to support the activities of the Resident Project Representative who is ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. CITY agrees that whenever ENGINEER informs him in writing that any such personnel provided by the CITY are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.
12. Assisting CITY in claims disputes with Contractor(s).
13. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
14. Assisting CITY in claims disputes with Contractor(s).

15. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
16. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this CONTRACT. Such services, if any, shall be furnished by ENGINEER on a fee basis negotiated by the respective parties outside of and in addition to this CONTRACT.
17. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
18. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
19. Services required to resolve bid protests or to rebid the projects for any reason.
20. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
21. Providing services after the completion of the construction phase not specifically listed in this CONTRACT.
22. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
23. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
24. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this ENGINEER services agreement.
25. Provide follow-up ENGINEER services during Contractor's warranty period.
26. Services related to development of the CITY's project financing and/or budget.
27. Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
28. Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
29. Surveying or SUE services other than those stated above.
30. Preparation of FEMA (CLOMR or LOMR) submittals.
31. Design of sanitary sewer extension, including plan and profile sheets and construction detail sheets.
32. Services related to public outreach, public meetings, or meetings with affected property owners.
33. Development of ENGINEER Guide Specifications to supplement City Technical Specifications

34. Prepare Preliminary Jurisdictional Determination Report.
35. Prepare Nationwide Permit (NWP) Pre-construction Notification (PCN).
36. Application for an Individual Section 404 Permit.
37. Phase I Environmental Site Assessment.
38. Archeological/cultural resources survey.
39. Coordination to conduct the archeological/cultural resources survey.
40. Presence/absence surveys for federally listed threatened/endangered species.
41. Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.
42. Application for General Land Office easements.
43. Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
44. Environmental documentation as follows:
 - Preparation of Environmental Assessment or other NEPA document
 - Preparation of a Section 404 permit application, a Pre-construction Notification (PCN), a request for a Jurisdictional Determination (JD), or other submittal to the USACE
 - Presence/absence surveys for federally listed threatened/endangered species
 - Phase I Environmental Site Assessment
 - Preparation of a Storm Water Pollution Prevention Plan (SWPPP)
 - Other environmental services not specifically described under BASIC/SPECIAL SERVICES of this scope

PART 5.0 PERIODS OF SERVICE:

TIME OF COMPLETION: ENGINEER is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services within time frames listed below.

- Draft Preliminary Design and Hydraulic Analysis Report submitted 75 days from Notice to Proceed
 - Submit Final Preliminary Design and Hydraulic Analysis Report 20 days after receiving comments from the CITY.
- 60% Design Documents submitted 120 days after receiving alignment approval from the CITY.
 - Submit 90% Design Documents 90 days after receiving comments from the CITY on the 60% Submittal.
 - Submit Sealed Contract Documents 45 days after receiving comments from the CITY on the 90% Submittal.

If ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to ENGINEER, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

PART 6.0 COMPENSATION:

Below is a summary of the proposed lump sum compensation. We have broken the fee down by task to help the City understand how the effort breaks down.

City of Midland Airport Water System Connection and Utility Improvements	
Task 1 – Project Management	\$ 21,860
Task 2 – Route Study, Prelim Design and Hydraulic Analysis	\$ 52,966
Task 3 – Final Design (60,90,100%)	\$ 76,295
Task 4a – Bid and Award	\$ 16,455
Task 4b – General Representation	\$ 46,170
Task 5 – Topographic Survey and SUE	\$ 76,200
Task 6 – Environmental Desktop Analysis	\$ 10,500
Task 7 – Regulatory Compliance Support	\$ 22,850
Project Total	\$ 323,296
Contingency 20%	\$ 64,660

PART 7.0 CITY'S RESPONSIBILITIES:

City shall perform the following in a timely manner so as not to delay the services of FNI:

- Provide meeting space and coordinate equipment needs, room set up, and logistics for meetings.
- Designate in writing a person to act as City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- Examine and provide prompt feedback on all submittals, draft reports, and other documents presented by FNI within a reasonable time so as not to delay the services of FNI.

- Furnish, or direct FNI to provide, Additional Services as stipulated in Part 4.0, of this Agreement or other services as required.
- Bear all costs incident to compliance with the requirements of this Part 7.0.

PART 8.0 OTHER:

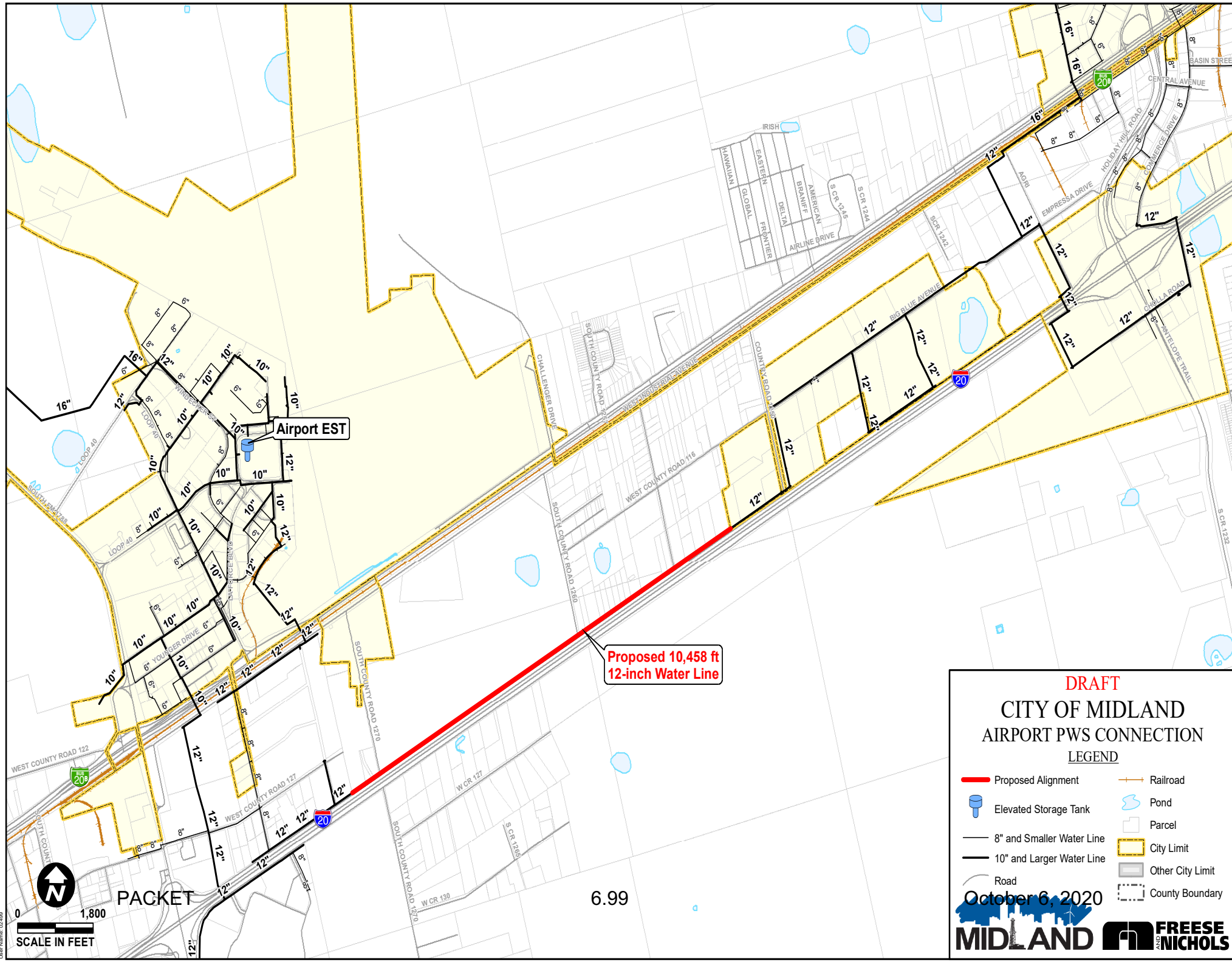
DESIGNATED REPRESENTATIVES: FNI and CITY designate the following representatives:

CLIENT's Designated Representative – Carl Craigo, PE, Utilities Director, 300 N. Loraine Street, Midland Texas 79701; Phone: 432-685-7261; E-mail: ccraigo@midlandtexas.gov

CLIENT's Accounting Representative -

FNI's Project Manager – Aaron Conine, 4055 International Plaza, Suite 200, Fort Worth, TX 76109;
Phone: 817-735-7469; E-mail: aaron.conine@freese.com

FNI's Accounting Representative – Sharon James, 4055 International Plaza, Suite 200, Fort Worth, TX 76109; Phone: 817-735-7298; E-mail: sharon.james@freese.com



Proposed 10,458 ft
12-inch Water Line

DRAFT

CITY OF MIDLAND

AIRPORT PWS CONNECTION

LEGEND

Proposed Alignment	Railroad
Elevated Storage Tank	Pond
8" and Smaller Water Line	Parcel
10" and Larger Water Line	City Limit
Road	Other City Limit
	County Boundary

October 6, 2020

MIDLAND **FREESE AND NICHOLS**

Created By: Freese and Nichols, Inc.
Job No.: 072004
Location: Midland City of Midland Airport PWS Project
Date: 10/06/2020
User Name: 02/699

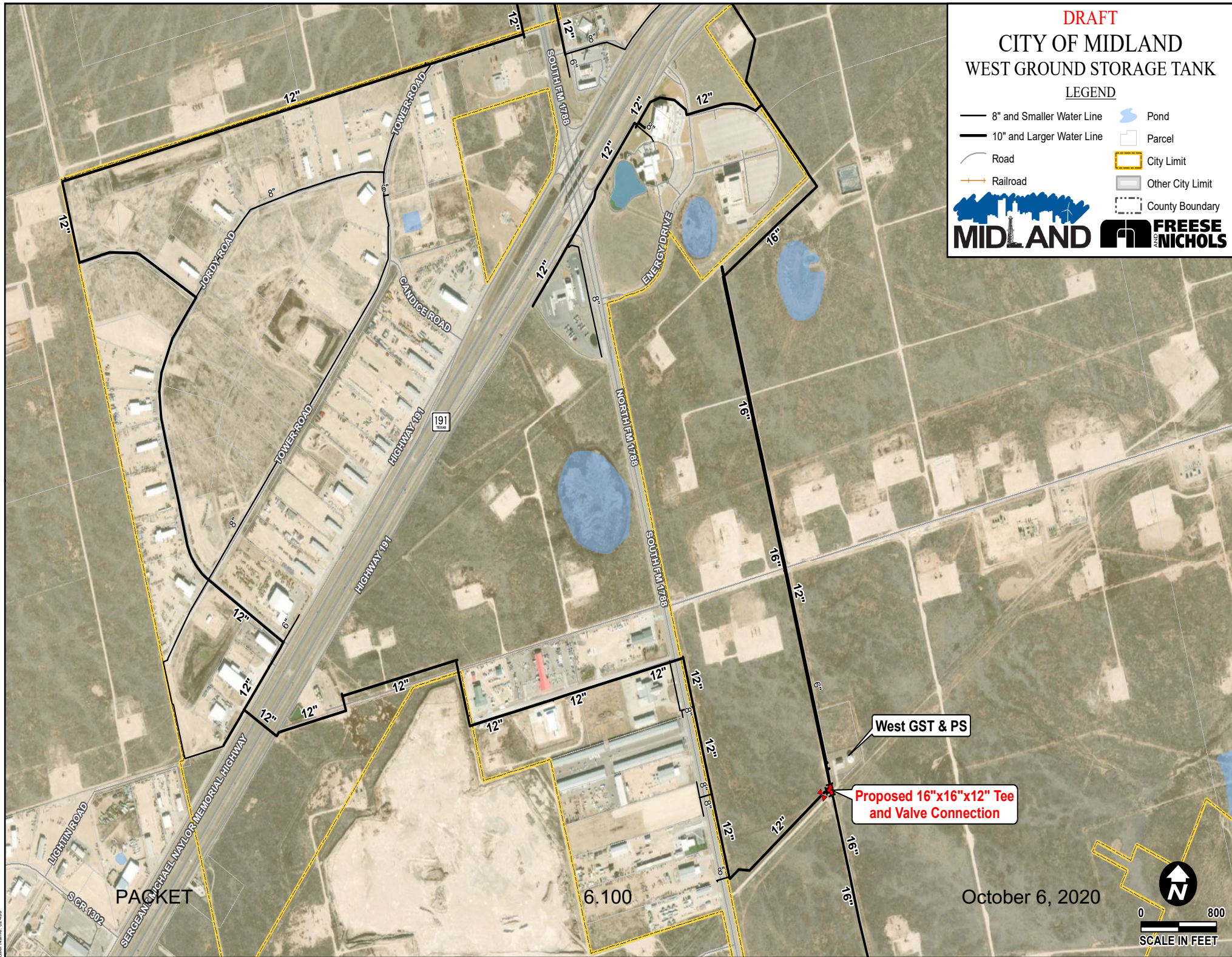
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CITY OF MIDLAND

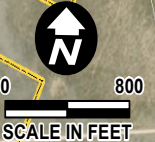
WEST GROUND STORAGE TANK

LEGEND

— 8" and Smaller Water Line	Pond
— 10" and Larger Water Line	Parcel
Road	City Limit
Railroad	Other City Limit
MIDLAND	County Boundary



October 6, 2020



RESOLUTION NO. 2020-091

RESOLUTION APPROVING THE SELECTION OF PARKHILL, SMITH & COOPER, INC., HDR ENGINEERING, INC., ENPROTEC / HIBBS & TODD, INC., FREESE AND NICHOLS, INC., JACOBS ENGINEERING GROUP INC., AND MAVERICK CIVIL & SURVEY, LLC D/B/A MAVERICK ENGINEERING, INC., AS RESPECTIVE FIRST CHOICES FOR PERFORMANCE OF ON-CALL ENGINEERING SUPPORT SERVICES FOR THE UTILITIES DEPARTMENT OVER THE NEXT FIVE (5) YEARS; AND PROVIDING THAT ANY AGREEMENT EXCEEDING \$100,000 SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, on February 25, 2020, the City Council approved Motion 029-2020 authorizing the City Manager to advertise a Request for Qualifications for on-call engineering support services (“Professional Services”) for the Utilities Department; and

WHEREAS, Motion 029-2020 also authorized the City Manager to negotiate professional services agreements with the most qualified providers of said Professional Services; and

WHEREAS, the Utilities Department advertised a Request for Qualifications for said Professional Services for the Utilities Department over the next five (5) years; and

WHEREAS, numerous engineering firms responded to the City’s Request for Qualifications; and

WHEREAS, after careful consideration, the Utilities Department is recommending Parkhill, Smith & Cooper, Inc., HDR Engineering, Inc., Enprotec / Hibbs & Todd, Inc., Freese and Nichols, Inc., Jacobs Engineering Group Inc., and Maverick Civil & Survey, LLC D/B/A Maverick Engineering, Inc., as respective first choices for the performance of said Professional Services over the next five (5) years; and

WHEREAS, the Council finds Parkhill, Smith & Cooper, Inc., HDR Engineering, Inc., Enprotec / Hibbs & Todd, Inc., Freese and Nichols, Inc., Jacobs Engineering Group Inc., and Maverick Civil & Survey, LLC D/B/A Maverick Engineering, Inc., to be the most highly qualified providers of such professional services based on demonstrated competence,

knowledge, and qualifications; and

WHEREAS, the Council finds it to be in the public interest to select Parkhill, Smith & Cooper, Inc., HDR Engineering, Inc., Enprotec / Hibbs & Todd, Inc., Freese and Nichols, Inc., Jacobs Engineering Group Inc., and Maverick Civil & Survey, LLC D/B/A Maverick Engineering, Inc., as respective first choices for the performance of said Professional Services over the next five (5) years;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Parkhill, Smith & Cooper, Inc., HDR Engineering, Inc., Enprotec / Hibbs & Todd, Inc., Freese and Nichols, Inc., Jacobs Engineering Group Inc., and Maverick Civil & Survey, LLC D/B/A Maverick Engineering, Inc., are hereby selected as respective first choices for the performance of said professional services over the next five (5) years.

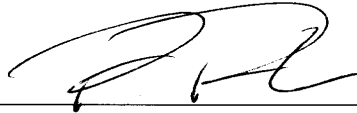
SECTION TWO. That in the event negotiations fail with any selected provider of said professional services, that other qualified engineering firms will be contacted and negotiated with regarding the performance of said professional services according to applicable rules and regulations.

SECTION THREE. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, professional services agreements with the firms listed in Section One hereof for said Professional Services. Provided, however, that any agreement exceeding \$100,000 shall not become effective until approved by the City Council.

On motion of Council member Robnett, seconded by Council member Norman, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 26th day of May, A.D., 2020, by the following vote:

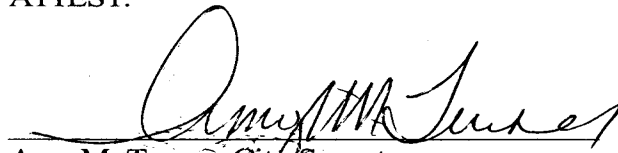
Council members voting "AYE": Blong, Trost, Robnett, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None



Patrick N. Payton, Mayor

ATTEST:



Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:



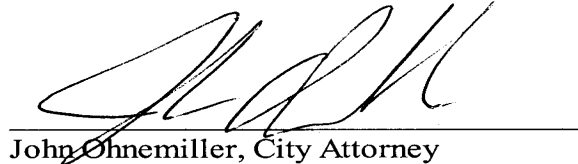
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:



Carl Craig, Utilities Director

APPROVED ONLY AS TO FORM:



John Ohnemiller, City Attorney



City Council Meeting

Item Number: 7
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Justine Ruff, Director
Subject: Motion authorizing the execution of a Commercial Hangar Lease Agreement between the City of Midland, Texas and Paul Armstrong dba Skywest Aviation, Inc., regarding Hangar S-14 located on City-owned property described as Tract 2-B of Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas (AIRPORTS)

Purpose:

Motion authorizing the execution of a Commercial Hangar Lease Agreement between the City of Midland, Texas and Paul Armstrong dba Skywest Aviation, Inc. at Midland International Air & Space Port for Hangar S-14 in Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Monthly - \$ 2,644.00

Annual - \$31,728.00

The appropriate Consumer Price Index (CPI) language is incorporated within the lease for annual rental adjustments.

Discussion:

Paul Armstrong dba Skywest Aviation, Inc. has been a tenant of Hangar S-14 in Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland County, Texas (2805 Earhart) since AvSource West vacated the facility in 2014.

Skywest Aviation, Inc. operates a business that provides aircraft maintenance and repair at Midland International Air & Space Port. The term of this Agreement shall commence on November 1, 2020, and terminate at midnight on October 31, 2025. The parties may mutually elect to extend the term of the Agreement for one five-year period, under the same terms and conditions, upon written notice to the other party.

The Airport Board voted during their September 16, 2020, meeting to recommend that City Council approve the execution of this lease.

A handwritten signature in black ink, appearing to read "Robert Palmer".

City Manager's Office

**COMMERCIAL HANGAR LEASE AGREEMENT
BETWEEN CITY OF MIDLAND, TEXAS AND
PAUL ARMSTRONG dba SKYWEST AVIATION, INC**

THIS LEASE AGREEMENT, made this 1st day of November, 2020, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Skywest Aviation, Inc., hereinafter referred to as "Lessee".

RECITALS

WHEREAS, the City owns and operates the Midland International Airport, located in the City of Midland, Texas hereinafter referred to as "Airport", and;

WHEREAS, Lessee desires to lease certain City-owned facilities and land at the Airport to engage in the business of aeronautics and provide certain aeronautical services, and Lessee desires to provide certain aviation services to the public as hereinafter permitted;

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, City and Lessee agree as follows:

ARTICLE 1. GRANT OF LEASE

- 1.01 **Leased Premises:** City agrees to lease to Lessee Hangar S-14 and Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas (2805 Earhart), and being more particularly described on Exhibit "A", attached hereto and incorporated by reference. Hangar S-14 and Tract 2-B are hereinafter collectively referred to as the "Leased Premises."
- 1.02 **Easements:** This Agreement shall be subject to such easements, right-of ways, drillsites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement, or which are shown on Exhibit "A".
- 1.03 **Acceptance of Leased Premises:** Lessee accepts the Leased Premises, buildings and improvements, including all fixtures, apparatus and equipment located therein **"AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE BUILDINGS ARE FIT FOR A PARTICULAR PURPOSE.** LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE BUILDINGS, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE BUILDINGS. LESSEE ALSO RECOGNIZES BY EXECUTING THE LEASE, THAT THE LESSEE IS AGREEING TO LEASE THE BUILDINGS **"AS IS"** THAT LESSEE AGREES

TO MAKE ITS OWN APPRAISAL OF THE BUILDINGS AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE BUILDINGS LEASED. IN NO EVENT SHALL A LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE BUILDINGS UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED **“AS IS”** AND WITH ALL FAULTS.

ARTICLE 2. TERM LEASE AGREEMENT

- 2.01 **Lease Term:** The term of this Agreement shall commence on November 1, 2020, and terminate at midnight on October 31, 2025, (“the Lease Term”) unless terminated earlier pursuant to the provisions of this Agreement. The parties may mutually elect to extend the term of the Agreement for one five-year period, under the same terms and conditions, upon written notice to the other party. Said notice shall occur no later than 90 days prior to the expiration of the then current term of the Agreement. This Agreement may continue on a month-to-month basis after the expiration of the term, subject to the terms and conditions hereof. The parties shall mutually agree upon the month-to-month extension in writing 90 days prior to the expiration of the term.

ARTICLE 3. RENT

- 3.01 **Amount of Base Rent:** During the Lease Term, Lessee agrees to pay monthly to City rent for the Leased Premises as follows: \$2,644.00.00 per month due on the first day of each month. For purposes of this agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be as set forth in Exhibit “A”.
- 3.02 **Rental Adjustments:** It is agreed and understood that provision must be made herein for an adjustment of rentals annually. Therefore, as of January 1, 2022, the Minimum monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government’s Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 12-month period of this lease, as compared with the indices at the commencement of the immediately preceding 12-month period of this lease. In no event shall the monthly payment due be less than \$2,644.00.
- 3.03 **Delivery of Rent:** All payments required of Lessee by this Agreement shall be delivered by mail, or in person, to the Office of the Director of Airports, Midland International Airport, 9506 LaForce Boulevard, P. O. Box 60305, Midland, Texas 79711, or to such other location as specified in writing by the City from time to time, no later than the date such payment is due, unless such due date falls on a Saturday, Sunday, or City

holiday, in which case such rent shall be due on the first City business day following the date such payment is due.

- 3.04 **Delinquent Rent Payments:** All rent and other payments which are past due more than five (5) days shall accrue simple interest at the rate of (a) eight percent (8.0%) annually or (b) the maximum percentage rate allowed by law, whichever is less. Notwithstanding anything to the contrary in this Section 3.04, if at the time performance of the provisions set forth in this Section 3.04 becomes due, the interest to be paid in accordance with this Section 3.04 exceeds the limits on the payment of interest established by law, then the amount of interest to be paid shall be reduced to the maximum limit allowed by law; furthermore, if, from any circumstances, City should ever receive as interest an amount that would exceed the highest lawful rate, the amount that would be excessive interest shall be applied to the payment of rent owing pursuant to the provisions of this Lease Agreement and not to the payment of interest.
- 3.05 **Application of Amounts Received:** Payments received shall be applied in the following order: (1) interest accrued for late payments, (2) late rental charges, (3) past due rent, beginning with the oldest amount due, (4) other past due amounts, (5) rent currently due, (6) other amounts currently due.
- 3.06 **Other Charges:** Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees and others from Airport use charges, including fuel flowage fees paid on fuel purchased by Lessee, as are levied generally by the City directly upon the operation of aircraft, or from automobile parking permit fees for parking areas that are not included within the Leased Premises, or from security fees.

ARTICLE 4. USE OF LEASED PREMISES

- 4.01 **Permitted Uses:** Lessee shall be permitted to use the Leased Premises for the purpose of conducting for-profit commercial aeronautical services or activities consisting of any or all of the following operations and no others:
- (a) Repair and maintenance service for aircraft, airframe, power plant, avionics, instruments, and related equipment;
 - (b) Storage of such equipment and apparatus as may be incidental and/or necessary to Lessee's operations, including motor vehicles operated and/or owned by Lessee; and
 - (c) Such other uses as may be permitted in writing by the City.

4.02 **Prohibited Uses:** Lessee agrees at all times to comply with the following:

- (a) Lessee shall at no time use, or permit the use of, the Leased Premises in a manner that is contrary to applicable federal, state, or local laws, ordinances, rules, or regulations, which shall include, but not be limited to, applicable Federal Aviation Administration rules and regulations and applicable regulations for the use of the Airport as may from time to time be promulgated by the City;
- (b) Lessee shall not permit any permanent, unshielded light or illumination source to cause glare as viewed from any street, adjacent properties or operating aircraft;
- (c) Lessee shall not cause or permit the burial or storage above ground on the Leased Premises of any hazardous waste or materials, as defined by federal or state law, except in accordance with applicable Federal, State, or local laws, ordinances, regulations and rules, as may be adopted or amended from time to time;
- (d) Lessee shall not cause or permit any use or activity on the Leased Premises which would create a hazardous condition for aircraft operating at the Airport;
- (e) Lessee shall not allow the Leased Premises to be used for parking of motor vehicles, motorcycles, or motor driven equipment by anyone other than customers, employees, or contractors of Lessee except as may be authorized by the Director of Airports, with all such parking being limited to areas designated by the Department of Airports for such parking. Lessee shall not be in default for the improper parking of vehicles over which neither Lessee nor any of its subtenants, customers, employees, or contractors have any control;
- (f) Lessee shall not operate, nor permit the operation of, a car rental business from the Leased Premises, unless the Lessee or the operator of said car rental business has executed a car rental concession or permit agreement with the City;
- (f) Lessee shall not allow scheduled airline passenger operations to be conducted on the Leased Premises.

4.03 **Compliance with Minimum Standards:** All activities conducted upon the Leased Premises, whether by Lessee or its sublessees, shall be in substantial conformance with the City's Minimum Standards for Aeronautical Activities, as such standards exist or may be duly amended from time to time by the City Council to the extent that such Minimum Standards may apply to Lessee's operations. City agrees to provide Lessee with written notice not later than 30 days prior to adoption of substantive changes to the Minimum Standards for Aeronautical Activities which would apply to Lessee's operations.

- 4.04 **Non-exclusive Uses:** Lessee understands and acknowledges that, as to that part of the Airport not included within the Leased Premises, the allowable uses permitted herein are on a non-exclusive basis with respect to other potential providers of aeronautical services at the Airport.

ARTICLE 5. OBLIGATIONS OF LESSEE WITH REGARD TO CONSTRUCTION OF IMPROVEMENTS

- 5.01 **Approval of Plans Not Assurance of Design Quality:** The approval by the Director of Airports of any plans and specifications applies only to the conformity of such plans to the general architectural and operational plan for the Leased Premises and the Airport. The approval of the Director of Airports does not constitute approval of the quality of the architectural or engineering work performed. Neither City nor the Director of Airports assumes any liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications. Construction of any contemplated improvements shall be in accordance with the plans presented to and approved by the Director of Airports. All construction work shall be subject to inspection by a representative employed by the City or an inspector from the Code Enforcement Department of the City, or both, to determine that such work conforms to the plans and specifications approved by the City.
- 5.02 **Contractor's Insurance; Bonds:** At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. **ALL INSURANCE SHALL NAME THE CITY AS ADDITIONAL INSURED AND CO-PAYEE AND PROVIDE FOR A WAIVER OF SUBROGATION IN FAVOR OF THE CITY.** Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself; it shall comply with the all-risk insurance provisions hereof.
- 5.03 **Compliance With Building Codes and Federal Standards:** All improvements made to the Leased Premises by Lessee shall comply with all applicable City Building Codes and

Federal standards for construction of airport improvements in effect at the time construction commences as well as all other applicable federal aviation regulations, if any.

- 5.04 **Encumbrance of Leasehold Estate:** Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest.
- 5.05 **Ownership of Buildings, Improvements and Fixtures:** Any and all buildings, improvements (including, but not limited to all aprons, taxiways and roadways), additions, alterations, and fixtures existing on the Commencement Date or constructed or placed on any part of the Leased Premises during the Lease Term by City or Lessee, shall be considered part of the real property of the Leased Premises, shall remain on the Leased Premises, and shall not be removed by Lessee or any sublessee without the written consent of City. All improvements, additions, alterations, and fixtures on the Leased Premises shall become the sole property of City upon termination of this Agreement without compensation to Lessee, it being understood and agreed by Lessee that the transfer of title to the City of the buildings and improvements located on the Leased Premises at the end of the Lease Term is additional consideration for this Agreement. Notwithstanding the above, Lessee shall have the right at any time during Lessee's occupancy of the Leased Premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, but not fixtures owned or placed by Lessee, in, under, or on the Leased Premises; provided, however, prior to the termination of the Lease Term, Lessee shall repair any damage to any buildings or improvements on the Leased Premises resulting from their removal. Any such personal property items which are not removed within sixty (60) days after the termination date of this Agreement shall become the property of City as of that date.
- 5.06 **Taxes, Assessments, and Fees:** Lessee shall pay and discharge all taxes, of any kind, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Leased Premises, the Improvements located thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. Lessee acknowledges and understands that it holds record title to the Improvements on the Leased Premises, and the Improvements shall be taxed under Lessee's account in a manner designed to determine the market value of the Improvements as of January 1st of each tax year. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and

which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination. The Lessee shall be solely responsible for the payment of all taxes and the payment of taxes shall be in addition to any rental payments.

- 5.07 **Cost, Expenses and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises, the improvements and/or the activities conducted by Lessee, which may arise or become due during the term of this Agreement. The Lessee shall be solely responsible for adequate water pressure and this shall be at Lessee's sole expense. The Lessee shall be responsible for all costs associated with providing water for fire suppression and all other water-related issues.

ARTICLE 6. REPAIRS, MAINTENANCE AND RESTORATION

- 6.01 **Maintenance by City:** City shall, at City's sole discretion and expense, keep in good repair, condition and appearance the taxiways and roadways which have been or may be constructed by City. City may commence required repairs as soon as reasonably practicable after receiving written notice from Lessee thereof. Except as provided in this Section, City shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or to any equipment, merchandise, facilities or fixtures therein, all of which shall be Lessee's responsibility. The amount and extent of the repairs to be made by City are in the City's sole discretion.
- 6.02 **Maintenance by Lessee:** Lessee shall, at Lessee's sole expense, keep the Leased Premises and all improvements of any kind, which may be existing at the commencement of the Lease Term or erected, installed, or made thereon by Lessee after commencement of the Lease Term in good repair, condition and appearance, normal wear and tear excepted. If the Lessee desires to improve or change the condition of the Leased Premises, the improvements and changes shall be at Lessee's sole cost. Other items of maintenance for which Lessee shall be solely responsible shall include, but not be limited to, the following:
- (a) Janitorial services, providing janitorial supplies, window washing, rubbish and trash removal;
 - (b) Supply and replacement of light bulbs in and on all buildings (except lighting removed for causing obstructions or glare);
 - (c) Replacement of cracked or broken glass in all buildings;
 - (d) Cleaning of interior stoppages in interior plumbing fixtures and drain lines up to the first manhole or clean out outside of the exterior of the building where the stoppage occurred;

- (e) Replacement of floor carpets or covering;
- (f) Maintenance of all doors and door operating systems, including weather stripping and glass replacement;
- (g) Painting, repairing, and replacement of interior walls not resulting from structural failure;
- (h) Landscaping and grass cutting services within the Leased Premises, including, but not limited to, repair or replacement of exterior building flood lights and planter lights;
- (i) Maintenance of all aprons, ramps, and roadways that are constructed by Lessee; and
- (j) Maintenance and repair of all air conditioning and utility systems. Subject to the provisions of Section 5.05, on the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Leased Premises to City in the same condition as received, except for fire and casualty, and ordinary wear and tear.

6.03 **Trash and Waste Removal:** Lessee agrees to cause to be removed from the Leased Premises, at its own expense, all waste, garbage and rubbish, and agrees not to deposit same on the Leased Premises except temporarily in waste or garbage containers provided by Lessee at Lessee's expense. Lessee further agrees that Lessee will store all parts, supplies, and other materials on the interior of buildings located on the Leased Premises, provided, however, that any parts or supplies which must be kept outside because of volatility of the supply item or the size of the part will be kept out of view of the public traveling on public rights of way or other surrounding tenants by installation of fencing or other means of screening approved by the Director of Airports.

ARTICLE 7. ACCESS TO AND USE OF AIRPORT

7.01 **Access to Airport:** City shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided, however, City shall not be in default of this Agreement if access is interrupted.

7.02 **Right to Use Airport:** Lessee and Lessee's employees, sublessees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or

the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

- 7.03 **Vehicular Operations on the Airfield:** No vehicles of Lessee, its employees, customers or invitees will be allowed to operate on, or cross, the runways and taxiways and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.
- 7.04 **Airport Certification Rules and Regulations:** Lessee shall comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139, as amended].
- 7.05 **Airport Security Rules and Regulations:** Lessee, its directors, officers, employees, and contractors shall comply with all federal and local Airport Security Regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA or TSA by reason of the NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS to comply with such Airport Security Regulations.
- 7.06 **14 C.F.R. Part 77 Requirements:** Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Lease Premises.
- 7.07 **Control of Structures:** Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects. City reserves the right to enter upon the Leased Premises and to remove the offending structure or object or cut the offending tree, at Lessee's expense.
- 7.07 **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 7.08 **Right of Over-flight:** There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent

in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

ARTICLE 8. INSURANCE

- 8.01 Lessee's Minimum Insurance Amounts:** Lessee shall obtain and maintain continuously in effect at all times during the Lease Term, at Lessee's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City:
- (a) Property and Casualty Insurance insuring against loss or damage to Lessee's improvements and any and all property being maintained or repaired by Lessee due to fire, lightning and all other perils included in standard extended coverage policies, and vandalism and malicious mischief, all in amounts of not less than one-hundred percent (100%) of replacement value;
 - (b) Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Leased Premises, or any other portion of the Airport, in at least the amount of \$1,000,000.00 per individual, \$1,000,000.00 per occurrence and \$1,000,000.00 with respect to property, and the statutory limits with respect to worker's compensation.
- 8.02 Lessee's Coverage Primary:** All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Lessee may carry. Insurance provided pursuant to Section 8.01 shall name the City as an additional insured or loss payee as the case may be and provide for a waiver of subrogation in favor of the City. The comprehensive general liability policy as provided in Paragraph 8.01(b) shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Lessee in the indemnity and hold harmless provisions included in Article 9 of this Agreement. The Lessee's insurance policies as required by this Agreement shall apply separately to the City as if separate policies 11 had been issued to Lessee and City.
- 8.03 Contents of General Liability Policy:** Lessee's Comprehensive General Liability policy shall protect the City and Lessee against any and all liability to any person or persons whose property damage or personal injury arises out of or is in connection with the occupation, use, or condition of the Leased Premises or resulting from any injury or damage occurring on or about the roads, driveways or other public areas of the Leased Premises used by Lessees, its trustees, officers, employees, students, invitees, and contractors at the Airport, whether or not such damage or injury is the result of negligence of the Lessee or its officers, employees, representatives, invitees, licensees, contractors, agents, guests, or students.

- 8.04 **Cancellation:** Certificates of Insurance: Lessee's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Lessee shall furnish to the City, annually, Certificates of Insurance showing City as an additional insured and evidencing that all of the herein-stated requirements have been met.
- 8.05 **Insurance Not Limitation on Indemnity:** The amount or amounts of all required policies shall not be deemed a limitation of the Lessee's agreement to indemnify and hold harmless the City, its officers and employees in the event Lessee or City, its officers or employees shall become liable in an amount in excess of the amount or amounts of such policies.
- 8.06 **City's Right to Purchase Insurance:** In the event such insurance as required by Section 8.01, above, shall lapse, the City reserves the right to obtain such insurance at Lessee's expense. Upon demand from City, Lessee shall reimburse City for the full amount of the premium paid on Lessee's behalf.

ARTICLE 9. INDEMNITY

- 9.01 **LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, LESSEE'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

ARTICLE 10. UTILITIES

- 10.01 Lessee shall be solely responsible for the payment of all water, electric, telephone, refuse, natural gas and other public utility services used on the Leased Premises.

ARTICLE 11. SIGNS

- 11.01 **Consent Required:** Except with the prior written consent of the City's Director of Airports Lessee shall not erect, maintain or display any signs or any advertising at, or on, the exterior part of structures on the Leased Premises, or inside any buildings located on the Leased Premises so as to be visible through the window or exterior doors thereof.
- 11.02 **Removal on Termination:** Upon the termination of this Agreement, Lessee shall remove, obliterate or paint out, as the City may direct, any and all signs and advertising on the Leased Premises or elsewhere at the Airport, and in connection therewith shall restore the Leased Premises to the same condition as prior to the placement of any such signs or advertising. In the event that there is a failure by Lessee to so remove, obliterate or paint out each and every sign or advertising and so to restore the Leased Premises, the City may, at its option, perform the necessary work at the expense of Lessee, and the charge therefor shall be paid by Lessee to the City on demand. In certain circumstances, the City may elect to allow specific signs to remain as existing at the termination of this Agreement. Such signs shall be identified and agreed upon mutually, in writing, by Lessee and City.

ARTICLE 12. ASSIGNMENT AND SUBLEASING

- 12.01 At no time shall Lessee sublease any portion of the Leased Premises or assign its interests or obligations in this Lease Agreement without the written consent of City. Any such assignment or attempted assignment shall be void.

ARTICLE 13. TAX LIENS

- 13.01 Lessee shall be solely responsible for the collection and payment of all applicable federal, state, and local taxes, including, but not limited to, sales, use, amusement, or excise tax required to be collected and paid over by Lessee to the appropriate taxing authority. Furthermore, Lessee shall be responsible for the payment of any applicable ad valorem taxes and any taxes on Lessee's personal property located on the Leased Premises. Lessee shall at no time permit the foreclosure of any tax liens to Lessee's leasehold interest in the Leased Premises or the buildings, fixtures, or other improvements located on the Leased Premises.

ARTICLE 14. DEFAULT AND REMEDIES

14.01 **Default by Lessee:** The following shall be deemed to be events of default by Lessee under this Agreement:

- (a) Lessee shall fail to pay when due any installment of rent or any other payment required pursuant to this Agreement;
- (b) Lessee shall abandon any substantial portion of the Leased Premises;
- (c) Lessee or any guarantor of Lessee's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee or any guarantor of Lessee's obligations hereunder;
- (d) Lessee or any guarantor of Lessee's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors;
- (d) Lessee shall do or permit to be done any act which results in a lien being filed against the Leased Premises;
- (e) The liquidation, termination, dissolution of Lessee or any guarantor of Lessee's obligations hereunder; or
- (f) Lessee shall be in noncompliance with any other term, provision or covenant of this Agreement, other than those specified in subpart (a) through (f) above.

14.02 **Abandonment of Business by Lessee:** Lessee further agrees that the abandonment for a period of thirty (30) days by Lessee of the conduct of its business activities at the Airport shall terminate Lessee's rights under this Agreement. By so terminating this Agreement, City does not waive any other claim or rights against Lessee. For the purposes of this paragraph, the term "abandonment" shall mean the failure of Lessee to be open for business on the Leased Premises except in the case of war, strike, catastrophe or causes beyond Lessee's control.

14.02 **No Remedy Exclusive:** No remedy herein conferred upon or reserved to the City or Lessee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed

expedient. In order to entitle the City and Lessee to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

- 14.04 **No Waiver of Breach:** City's failure or delay in declaring the existence of an event of default by Lessee shall not be construed as a waiver thereof, nor shall it be construed so as to waive or to lessen the right of the City to insist upon the performance by Lessee of any term, covenant or condition hereof, or to exercise any rights given it on account of any such event of default. A waiver of any particular event of default shall not be deemed to be a waiver of the same, similar of any other subsequent event of default.
- 14.05 **Expeditious Action:** Notwithstanding any provision as to notice in this Agreement herein contained, if in City's reasonable judgment the continuance of any event of default by Lessee for the full period of the notice to cure the event of default will jeopardize the operation of the Airport or the rights of the City or the other Airport tenants, City may, without notice, elect to perform those acts in respect to which Lessee is in default. Lessee shall reimburse City for any reasonable and necessary costs incurred by the City pursuant to this Section 14.05.

ARTICLE 15. TERMINATION BY LESSEE

- 15.01 **Termination:** Lessee shall have the right to terminate this Agreement in its entirety, and all rights and obligations ensuing therefrom immediately upon the occurrence of the following:
- (a) The issuance of any order, rule or regulation of the Federal Aviation Administration, or its successor Federal Agency, or other competent government authority, Federal or State, or the issuance and execution of any judicial process by any court of competent jurisdiction, materially restricting for a period of at least sixty (60) days, the use of the airport for aeronautical purposes, provided that none of the foregoing is due to any fault of Lessee; or
 - (b) The material restriction of the City's operation of the Airport by action of the Federal Government, or any department or agency thereof, under its wartime or emergency powers, and the continuance thereof for a period of not less than sixty (60) days; provided, however, that without prejudice to the rights of Lessee to terminate as above provided, the City and Lessee may mutually agree to adjust fees and charges; or
 - (c) Material restrictions of the operation of the Airport arising from City's failure to maintain and keep in repair the landing area of the Airport.
- 15.02 **Payment and Termination:** If Lessee terminates this Lease for any of the reasons set forth in (a) through (c) of Section 15.01, City shall promptly repay Lessee any rent

previously paid by Lessee attributable to the period following the date of such termination. City shall have the right, in its sole discretion to terminate this Agreement in its entirety for any or no reason upon giving the Lessee one hundred and twenty (120) days written notice.

ARTICLE 16. MISCELLANEOUS PROVISIONS

- 16.01 **Release:** LESSEE HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES CITY, ITS EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.
- 16.02 **Quiet Enjoyment:** Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.
- 16.03 **Force Majeure:** Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.
- 16.04 **Independent Contractor:** It is expressly understood and agreed that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Lessee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Lessee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder and any provisions in this Agreement which may appear to give City the right to direct Lessee as to details of doing the work herein covered or to exercise a measure of control

over the work shall be deemed to mean that Lessee shall follow the desires of City in the results of the work only. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Lessee's work.

- 16.05 **Inspection by City:** City may enter upon the Leased Premises at any reasonable time for any purpose necessary, incidental to or connected with the performance of City's obligations hereunder, or in the exercise of its governmental functions, for fire protection or security purposes, or for inspecting or maintaining the Leased Premises, or doing any and all things City is obligated to do, or which may be deemed by City necessary or desirable for the proper conduct and operation of the Airport or the protection of City's interests.
- 16.06 **On-Site Representatives:** Lessee shall select and appoint a representative or representatives for its operations at the Airport. The representatives shall be qualified and experienced, and vested with the full power and authority to act in the name of the Lessee with respect to the method, manner and conduct of the operation of Lessee to be performed under this Agreement. City's on-site representative shall be the City's Director of Airports.
- 16.07 **Conformance with Rules and Regulations:** The use of the Airport by Lessee shall be subject to any and all rules, regulations and ordinances which are now in force or which may be hereafter adopted by the City with respect to the operation and use of the Airport, but no such rules, regulations, or ordinances shall increase the Base Rent or Additional Rent payable by Lessee under this Lease or otherwise materially and adversely affect Lessee's tenure of the Leased Premises under this Lease. Furthermore, this Agreement and Lessee's use of the Airport shall be subject to any and all applicable laws, ordinances, resolutions, statutes, rules, regulations or orders of any Federal, State or local governmental authority lawfully exercising jurisdiction over the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.
- 16.08 **Licenses and Permits:** Lessee hereby agrees that it shall, at its own expense and cost, procure and obtain all lawfully required licenses and permits, certificates and other authorizations required by any governmental authority, in connection with or covering the operations or activities permitted to be performed by it under the provisions of this Agreement.
- 16.09 **Notices:** Notices provided for in this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to City: Director of Airports
P. O. Box 60305
9506 LaForce Boulevard
Midland, Texas 79711

With Copy To: City Manager
P. O. Box 1152
300 North Loraine
Midland, Texas 79702

If to Lessee: Skywest Aviation, Inc.
Paul Armstrong
10000 South County Road 1210
Midland, Texas 79706

The parties may change the representative or address for delivery of notices from time to time by sending written notices to the other party. All notices shall be in writing and effective only upon actual receipt.

- 16.10 **Governing Law and Venue:** All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. This contract shall be governed by the laws of the State of Texas.
- 16.11 **Severability:** If any provision of this Agreement is invalid or unenforceable, this Agreement shall be considered severable as to such provision, and the remainder of this Agreement shall remain valid and binding as though such invalid or unenforceable provision were not included herein.
- 16.12 **Use of Language:** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.
- 16.13 **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which constitute but one and the same instrument.
- 16.14 **Development of the Airport:** Future development, changes, alterations, modifications or improvement to the Airport shall be at the sole discretion of the City, subject only to such notification to Lessee that the Federal Aviation Administration may dictate.
- 16.15 **Subordination to Federal Agreements:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.
- 16.16 **No Exclusivity on Aeronautical Services:** Nothing herein contained shall be construed to grant or authorize the granting of the exclusive right to provide aeronautical services to

the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended.

16.17 Termination At Will: City may terminate this Agreement at will for no or any reason upon giving one hundred and twenty (120) days written notice to the Lessee. The parties to this Lease understand and agree that it is in City's sole discretion to cancel the Lease during the term of the Lease without penalty to City. The parties have no expectation and have received no guarantees that this Lease will not be terminated before October 31, 2025. The parties have bargained for the flexibility of terminating this Lease upon tender of the requisite notice at any time during the term of this Lease. All work and services under this Lease shall be suspended immediately upon termination of the Lease becoming effective.

16.18 Discrimination Prohibited: The Lessee, for itself, its trustees, officers, legal representatives, successors-in-interest and assigns, as a part of the consideration hereof, agrees (1) that no person on the grounds of race, color, sex, national origin, veteran status or disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, sex, color, national origin, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises and the Airport in compliance with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and to re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement were terminated by its own term pursuant to Section 2.01, above.

16.19 Affirmative Action Program: Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Agreement.

16.20 Entire Agreement: This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed modified, discharged or extended, except by written instrument duly executed by City and Lessee. The parties

agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

16.21 Attorney's Fees: BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LEASE, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE LEASE. THE LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LEASE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LEASE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), THE LESSEE AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED. LESSEE AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. BY EXECUTION OF THE AGREEMENT, LESSEE HEREBY REPRESENTS AND WARRANTS TO THE CITY THAT LESSEE HAS READ AND UNDERSTOOD THE AGREEMENT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

16.22 Governmental Immunity: By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

16.23 Third-Party Beneficiary: The City's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2020.

THE CITY OF MIDLAND, TEXAS

SKYWEST AVIATION INC.

BY: _____
Patrick N. Payton, Mayor

BY: _____
Paul Armstrong, Owner

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO CONTENT:

Justine Ruff, Director of Airports

STATE OF TEXAS

COUNTY OF MIDLAND

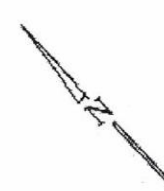
BEFORE ME, the undersigned authority, on this day personally appeared PAUL ARMSTRONG, OWNER OF SKYWEST AVIATION, INC. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of SKYWEST AVIATION, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2020.

Notary Public, State of Texas

Signature Page for Commercial Hangar
Lease Agreement Between City of Midland,
Texas and Paul Armstrong dba Skywest Aviation, Inc.

Stan Piper
Professional Land Surveyor #1974



Prepared by:
PIPER SURVEYING CO.
P.O. Box 60432
Midland, Texas 79711
(817)550-7810

Prepared for:
AVION FLIGHT CENTRE, Inc.
Attn: Mr. Charles Perry
P.O. Box 60380
Midland, Texas 79711-380



City Council Meeting

Item Number: 8
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Justine Ruff, Director
Subject: Motion authorizing the execution of a Commercial Hangar Lease Agreement between the City of Midland, Texas and Empire Airlines, Incorporated, regarding Hangar S-13 located on City-owned property described as Tract 2-B of Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas (AIRPORTS)

Purpose:

Motion authorizing the execution of a Commercial Hangar Lease Agreement between Empire Airlines, Incorporated, and the City of Midland, Texas at Midland International Air & Space Port of Hangar S13 and Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Monthly - \$ 2,644.00

Annual - \$31,728.00

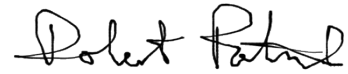
The appropriate Consumer Price Index (CPI) language is incorporated within the lease for annual rental adjustments.

Discussion:

Empire Airlines (contracted by Federal Express) has been a tenant since 2003 of Hangar S13 and Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland County, Texas (2807 Earhart). The term of this Agreement shall commence on November 1, 2020, and terminate at midnight on October 31, 2025. The parties may mutually

elect to extend the term of the Agreement for one five-year period, under the same terms and conditions, upon written notice to the other party.

The Airport Board voted during their September 16, 2020, meeting to recommend that City Council approve the execution of this lease.

A handwritten signature in black ink, appearing to read "Robert F. Patel". The signature is fluid and cursive, with the first name "Robert" and last name "Patel" clearly distinguishable.

City Manager's Office

**COMMERCIAL HANGAR LEASE AGREEMENT
BETWEEN CITY OF MIDLAND, TEXAS
AND EMPIRE AIRLINES, INCORPORATED**

THIS LEASE AGREEMENT, made this 1st day of November, 2020, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Empire Airlines, Incorporated, hereinafter referred to as "Lessee".

RECITALS

WHEREAS, the City owns and operates the Midland International Air & Space Port, located in the City of Midland, Texas hereinafter referred to as "Airport", and;

WHEREAS, Lessee desires to lease certain City-owned facilities and land at the Airport to engage in the business of aeronautics and provide certain aeronautical services, and Lessee desires to provide certain aviation services to the public as hereinafter permitted; and

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, City and Lessee agree as follows:

ARTICLE 1. GRANT OF LEASE

- 1.01 **Leased Premises:** City agrees to lease to Lessee: Hangar S-13 and Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, United 12, Midland, Midland County, Texas, and being more particularly described on Exhibit "A", attached hereto and incorporated by reference. Hangar S-13 and Tract 2-B are hereinafter collectively referred to as the "Leased Premises".
- 1.02 **Easements:** This Agreement shall be subject to such easements, rights-of-way, drill sites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement, or which are shown on Exhibit "A".
- 1.03 **Acceptance of Leased Premises:** Lessee accepts the Leased Premises, buildings and improvements, including all fixtures, apparatus and equipment located therein **"AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE BUILDINGS ARE FIT FOR A PARTICULAR PURPOSE.** LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE BUILDINGS, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE BUILDINGS. LESSEE ALSO RECOGNIZES BY EXECUTING THE LEASE, THAT THE LESSEE IS AGREEING TO LEASE THE BUILDINGS **"AS IS"** THAT LESSEE AGREES TO MAKE ITS OWN APPRAISAL OF THE BUILDINGS AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE BUILDINGS LEASED. IN NO EVENT SHALL A LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE

BUILDINGS UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS.

ARTICLE 2. TERM LEASE AGREEMENT

- 2.01 **Lease Term:** The term of this Agreement shall commence on November 1, 2020, and terminate at midnight on October 31, 2025, ("the Lease Term") unless terminated earlier pursuant to the provisions of this Agreement. The parties may mutually elect to extend the term of the Agreement for one five-year period, under the same terms and conditions, upon written notice to the other party. Said notice shall occur no later than 90 days prior to the expiration of the then current term of the Agreement. This Agreement may continue on a month-to-month basis after the expiration of the term, subject to the terms and conditions hereof. The parties shall mutually agree upon the month-to-month extension in writing 90 days prior to the expiration of the term.

ARTICLE 3. RENT

- 3.01 **Amount of Base Rent:** During the Lease Term, Lessee agrees to pay monthly to City rent for the Leased Premises as follows: \$2,644.00.00 per month due on the first day of each month. For purposes of this agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be as set forth in Exhibit "A".
- 3.02 **Rental Adjustments:** It is agreed and understood that provision must be made herein for an adjustment of rentals annually. Therefore, as of January 1, 2022, the Minimum monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 12-month period of this lease, as compared with the indices at the commencement of the immediately preceding 12-month period of this lease. In no event shall the monthly payment due be less than \$2,644.00.
- 3.03 **Delivery of Rent:** All payments required of Lessee by this Agreement shall be delivered by mail, or in person, to the Office of the Director of Airports, Midland International Airport, 9506 LaForce Boulevard, P. O. Box 60305, Midland, Texas 79711, or to such other location as specified in writing by the City from time to time, no later than the date such payment is due, unless such due date falls on a Saturday, Sunday, or City holiday, in which case such rent shall be due on the first City business day following the date such payment is due.
- 3.04 **Delinquent Rent Payments:** All rent and other payments which are past due more than five (5) days shall accrue simple interest at the rate of (a) eight percent (8.0%) annually or (b) the maximum percentage rate allowed by law, whichever is less. Notwithstanding anything to the contrary in this Section 3.04, if at the time performance of the provisions set forth in this Section 3.04 becomes due, the interest to be paid in accordance with this Section 3.04 exceeds the limits on the payment of interest established by law, then the amount of interest to be paid shall be reduced to the maximum limit allowed by law; furthermore, if, from any circumstances, City

should ever receive as interest an amount that would exceed the highest lawful rate, the amount that would be excessive interest shall be applied to the payment of rent owing pursuant to the provisions of this Lease Agreement and not to the payment of interest.

- 3.05 **Application of Amounts Received:** Payments received shall be applied in the following order: (1) interest accrued for late payments, (2) late rental charges, (3) past due rent, beginning with the oldest amount due, (4) other past due amounts, (5) rent currently due, (6) other amounts currently due.
- 3.06 **Other Charges:** Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees and others from Airport use charges, including fuel flowage fees paid on fuel purchased by Lessee, as are levied generally by the City directly upon the operation of aircraft, or from automobile parking permit fees for parking areas that are not included within the Leased Premises, or from security fees.

ARTICLE 4. USE OF LEASED PREMISES

- 4.01 **Permitted Uses:** Lessee shall be permitted to use the Leased Premises for the purpose of conducting for-profit commercial aeronautical services or activities consisting of any or all of the following operations and no others:
- (a) Repair and maintenance service for aircraft, airframe, power plant, avionics, instruments, and related equipment;
 - (b) Storage of such equipment and apparatus as may be incidental and/or necessary to Lessee's operations, including motor vehicles operated and/or owned by Lessee; and
 - (c) Such other uses as may be permitted in writing by the City.
- 4.02 **Prohibited Uses:** Lessee agrees at all times to comply with the following:
- (a) Lessee shall at no time use, or permit the use of, the Leased Premises in a manner that is contrary to applicable federal, state, or local laws, ordinances, rules, or regulations, which shall include, but not be limited to, applicable Federal Aviation Administration rules and regulations and applicable regulations for the use of the Airport as may from time to time be promulgated by the City;
 - (b) Lessee shall not permit any permanent, unshielded light or illumination source to cause glare as viewed from any street, adjacent properties or operating aircraft;
 - (c) Lessee shall not cause or permit the burial or storage above ground on the Leased Premises of any hazardous waste or materials, as defined by federal or state law, except in accordance with applicable Federal, State, or local laws, ordinances, regulations and rules, as may be adopted or amended from time to time;

- (d) Lessee shall not cause or permit any use or activity on the Leased Premises which would create a hazardous condition for aircraft operating at the Airport;
- (e) Lessee shall not allow the Leased Premises to be used for parking of motor vehicles, motorcycles, or motor driven equipment by anyone other than customers, employees, or contractors of Lessee except as may be authorized by the Director of Airports, with all such parking being limited to areas designated by the Department of Airports for such parking. Lessee shall not be in default for the improper parking of vehicles over which neither Lessee nor any of its subtenants, customers, employees, or contractors have any control;
- (f) Lessee shall not operate, nor permit the operation of, a car rental business from the Leased Premises, unless the Lessee or the operator of said car rental business has executed a car rental concession or permit agreement with the City;
- (f) Lessee shall not allow scheduled airline passenger operations to be conducted on the Leased Premises.

4.03 **Compliance with Minimum Standards:** All activities conducted upon the Leased Premises, whether by Lessee or its sublessees, shall be in substantial conformance with the City's Minimum Standards for Aeronautical Activities, as such standards exist or may be duly amended from time to time by the City Council to the extent that such Minimum Standards may apply to Lessee's operations. City agrees to provide Lessee with written notice not later than 30 days prior to adoption of substantive changes to the Minimum Standards for Aeronautical Activities which would apply to Lessee's operations.

4.04 **Non-exclusive Uses:** Lessee understands and acknowledges that, as to that part of the Airport not included within the Leased Premises, the allowable uses permitted herein are on a non-exclusive basis with respect to other potential providers of aeronautical services at the Airport.

ARTICLE 5. OBLIGATIONS OF LESSEE WITH REGARD TO CONSTRUCTION OF IMPROVEMENTS

5.01 **Approval of Plans Not Assurance of Design Quality:** The approval by the Director of Airports of any plans and specifications applies only to the conformity of such plans to the general architectural and operational plan for the Leased Premises and the Airport. The approval of the Director of Airports does not constitute approval of the quality of the architectural or engineering work performed. Neither City nor the Director of Airports assumes any liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications. Construction of any contemplated improvements shall be in accordance with the plans presented to and approved by the Director of Airports. All construction work shall be subject to inspection by a representative employed by the City or an inspector from the Code Enforcement Department of the City, or both, to determine that such work conforms to the plans and specifications approved by the City.

- 5.02 **Contractor's Insurance; Bonds:** At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. **ALL INSURANCE SHALL NAME THE CITY AS ADDITIONAL INSURED AND CO-PAYEE AND PROVIDE FOR A WAIVER OF SUBROGATION IN FAVOR OF THE CITY.** Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself; it shall comply with the all-risk insurance provisions hereof.
- 5.03 **Compliance With Building Codes and Federal Standards:** All improvements made to the Leased Premises by Lessee shall comply with all applicable City Building Codes and Federal standards for construction of airport improvements in effect at the time construction commences as well as all other applicable federal aviation regulations, if any.
- 5.04 **Encumbrance of Leasehold Estate:** Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest.
- 5.05 **Ownership of Buildings, Improvements and Fixtures:** Any and all buildings, improvements (including, but not limited to all aprons, taxiways and roadways), additions, alterations, and fixtures existing on the Commencement Date or constructed or placed on any part of the Leased Premises during the Lease Term by City or Lessee, shall be considered part of the real property of the Leased Premises, shall remain on the Leased Premises, and shall not be removed by Lessee or any sublessee without the written consent of City. All improvements, additions, alterations, and fixtures on the Leased Premises shall become the sole property of City upon termination of this Agreement without compensation to Lessee, it being understood and agreed by Lessee that the transfer of title to the City of the buildings and improvements located on the Leased Premises at the end of the Lease Term is additional consideration for this Agreement. Notwithstanding the above, Lessee shall have the right at any time during Lessee's occupancy of the Leased Premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, but not fixtures owned or placed by Lessee, in, under, or on the Leased Premises; provided, however, prior to the termination of the Lease Term, Lessee shall repair any damage to any buildings or improvements on the Leased Premises resulting from their removal. Any such personal property items which are not removed within sixty (60) days after the termination date of this Agreement shall become the property of City as of that date.
- 5.06 **Taxes, Assessments, and Fees:** Lessee shall pay and discharge all taxes, of any kind, assessments or other fees whether general or special, ordinary or

extraordinary, charged by any government or quasi-governmental entity relating directly to the Leased Premises, the Improvements located thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. Lessee acknowledges and understands that it holds record title to the Improvements on the Leased Premises, and the Improvements shall be taxed under Lessee's account in a manner designed to determine the market value of the Improvements as of January 1st of each tax year. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination. The Lessee shall be solely responsible for the payment of all taxes and the payment of taxes shall be in addition to any rental payments.

- 5.07 **Cost, Expenses and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises, the improvements and/or the activities conducted by Lessee, which may arise or become due during the term of this Agreement. The Lessee shall be solely responsible for adequate water pressure and this shall be at Lessee's sole expense. The Lessee shall be responsible for all costs associated with providing water for fire suppression and all other water-related issues.

ARTICLE 6. REPAIRS, MAINTENANCE AND RESTORATION

- 6.01 **Maintenance by City:** City shall, at City's sole discretion and expense, keep in good repair, condition and appearance the taxiways and roadways which have been or may be constructed by City. City may commence required repairs as soon as reasonably practicable after receiving written notice from Lessee thereof. Except as provided in this Section, City shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or to any equipment, merchandise, facilities or fixtures therein, all of which shall be Lessee's responsibility. The amount and extent of the repairs to be made by City are in the City's sole discretion.
- 6.02 **Maintenance by Lessee:** Lessee shall, at Lessee's sole expense, keep the Leased Premises and all improvements of any kind, which may be existing at the commencement of the Lease Term or erected, installed, or made thereon by Lessee after commencement of the Lease Term in good repair, condition and appearance, normal wear and tear excepted. If the Lessee desires to improve or change the condition of the Leased Premises, the improvements and changes shall be at Lessee's sole cost. Other items of maintenance for which Lessee shall be solely responsible shall include, but not be limited to, the following:

- (a) Janitorial services, providing janitorial supplies, window washing, rubbish and trash removal;

- (b) Supply and replacement of light bulbs in and on all buildings (except lighting removed for causing obstructions or glare);
- (c) Replacement of cracked or broken glass in all buildings;
- (d) Cleaning of interior stoppages in interior plumbing fixtures and drain lines up to the first manhole or clean out outside of the exterior of the building where the stoppage occurred;
- (e) Replacement of floor carpets or covering;
- (f) Maintenance of all doors and door operating systems, including weather stripping and glass replacement;
- (g) Painting, repairing, and replacement of interior walls not resulting from structural failure;
- (h) Landscaping and grass cutting services within the Leased Premises, including, but not limited to, repair or replacement of exterior building flood lights and planter lights;
- (i) Maintenance of all aprons, ramps, and roadways that are constructed by Lessee; and
- (j) Maintenance and repair of all air conditioning and utility systems. Subject to the provisions of Section 5.05, on the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Leased Premises to City in the same condition as received, except for fire and casualty, and ordinary wear and tear.

6.03 Trash and Waste Removal: Lessee agrees to cause to be removed from the Leased Premises, at its own expense, all waste, garbage and rubbish, and agrees not to deposit same on the Leased Premises except temporarily in waste or garbage containers provided by Lessee at Lessee's expense. Lessee further agrees that Lessee will store all parts, supplies, and other materials on the interior of buildings located on the Leased Premises, provided, however, that any parts or supplies which must be kept outside because of volatility of the supply item or the size of the part will be kept out of view of the public traveling on public rights of way or other surrounding tenants by installation of fencing or other means of screening approved by the Director of Airports.

ARTICLE 7. ACCESS TO AND USE OF AIRPORT

7.01 Access to Airport: City shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided, however, City shall not be in default of this Agreement if access is interrupted.

7.02 Right to Use Airport: Lessee and Lessee's employees, sublessees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable

federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

- 7.03 **Vehicular Operations on the Airfield:** No vehicles of Lessee, its employees, customers or invitees will be allowed to operate on, or cross, the runways and taxiways and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.
- 7.04 **Airport Certification Rules and Regulations:** Lessee shall comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139, as amended].
- 7.05 **Airport Security Rules and Regulations:** Lessee, its directors, officers, employees, and contractors shall comply with all federal and local Airport Security Regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA or TSA by reason of the NEGLIGENCE OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS to comply with such Airport Security Regulations.
- 7.06 **14 C.F.R. Part 77 Requirements:** Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Lease Premises.
- 7.07 **Control of Structures:** Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects. City reserves the right to enter upon the Leased Premises and to remove the offending structure or object or cut the offending tree, at Lessee's expense.
- 7.07 **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 7.08 **Right of Over-flight:** There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

ARTICLE 8. INSURANCE

- 8.01 **Lessee's Minimum Insurance Amounts:** Lessee shall obtain and maintain continuously in effect at all times during the Lease Term, at Lessee's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City:
- (a) Property and Casualty Insurance insuring against loss or damage to Lessee's improvements and any and all property being maintained or repaired by Lessee due to fire, lightning and all other perils included in standard extended coverage policies, and vandalism and malicious mischief, all in amounts of not less than one-hundred percent (100%) of replacement value;
 - (b) Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Leased Premises, or any other portion of the Airport, in at least the amount of \$1,000,000.00 per individual, \$1,000,000.00 per occurrence and \$1,000,000.00 with respect to property, and the statutory limits with respect to worker's compensation.
- 8.02 **Lessee's Coverage Primary:** All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Lessee may carry. Insurance provided pursuant to Section 8.01 shall name the City as an additional insured or loss payee as the case may be and provide for a waiver of subrogation in favor of the City. The comprehensive general liability policy as provided in Paragraph 8.01(b) shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Lessee in the indemnity and hold harmless provisions included in Article 9 of this Agreement. The Lessee's insurance policies as required by this Agreement shall apply separately to the City as if separate policies had been issued to Lessee and City.
- 8.03 **Contents of General Liability Policy:** Lessee's Comprehensive General Liability policy shall protect the City and Lessee against any and all liability to any person or persons whose property damage or personal injury arises out of or is in connection with the occupation, use, or condition of the Leased Premises or resulting from any injury or damage occurring on or about the roads, driveways or other public areas of the Leased Premises used by Lessees, its trustees, officers, employees, students, invitees, and contractors at the Airport, whether or not such damage or injury is the result of negligence of the Lessee or its officers, employees, representatives, invitees, licensees, contractors, agents, guests, or students.
- 8.04 **Cancellation:** Certificates of Insurance: Lessee's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Lessee shall furnish to the City, annually, Certificates of Insurance showing City as an additional insured and evidencing that all of the herein-stated requirements have been met.

- 8.05 **Insurance Not Limitation on Indemnity:** The amount or amounts of all required policies shall not be deemed a limitation of the Lessee's agreement to indemnify and hold harmless the City, its officers and employees in the event Lessee or City, its officers or employees shall become liable in an amount in excess of the amount or amounts of such policies.
- 8.06 **City's Right to Purchase Insurance:** In the event such insurance as required by Section 8.01, above, shall lapse, the City reserves the right to obtain such insurance at Lessee's expense. Upon demand from City, Lessee shall reimburse City for the full amount of the premium paid on Lessee's behalf.

ARTICLE 9. INDEMNITY

- 9.01 **LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, LESSEE'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

ARTICLE 10. UTILITIES

- 10.01 Lessee shall be solely responsible for the payment of all water, electric, telephone, refuse, natural gas and other public utility services used on the Leased Premises.

ARTICLE 11. SIGNS

- 11.01 **Consent Required:** Except with the prior written consent of the City's Director of Airports Lessee shall not erect, maintain or display any signs or any advertising at, or on, the exterior part of structures on the Leased Premises, or inside any buildings located on the Leased Premises so as to be visible through the window or exterior doors thereof.

- 11.02 **Removal on Termination:** Upon the termination of this Agreement, Lessee shall remove, obliterate or paint out, as the City may direct, any and all signs and advertising on the Leased Premises or elsewhere at the Airport, and in connection therewith shall restore the Leased Premises to the same condition as prior to the placement of any such signs or advertising. In the event that there is a failure by Lessee to so remove, obliterate or paint out each and every sign or advertising and so to restore the Leased Premises, the City may, at its option, perform the necessary work at the expense of Lessee, and the charge therefor shall be paid by Lessee to the City on demand. In certain circumstances, the City may elect to allow specific signs to remain as existing at the termination of this Agreement. Such signs shall be identified and agreed upon mutually, in writing, by Lessee and City.

ARTICLE 12. ASSIGNMENT AND SUBLEASING

- 12.01 At no time shall Lessee sublease any portion of the Leased Premises or assign its interests or obligations in this Lease Agreement without the written consent of City. Any such assignment or attempted assignment shall be void.

ARTICLE 13. TAX LIENS

- 13.01 Lessee shall be solely responsible for the collection and payment of all applicable federal, state, and local taxes, including, but not limited to, sales, use, amusement, or excise tax required to be collected and paid over by Lessee to the appropriate taxing authority. Furthermore, Lessee shall be responsible for the payment of any applicable ad valorem taxes and any taxes on Lessee's personal property located on the Leased Premises. Lessee shall at no time permit the foreclosure of any tax liens to Lessee's leasehold interest in the Leased Premises or the buildings, fixtures, or other improvements located on the Leased Premises.

ARTICLE 14. DEFAULT AND REMEDIES

- 14.01 **Default by Lessee:** The following shall be deemed to be events of default by Lessee under this Agreement:
- (a) Lessee shall fail to pay when due any installment of rent or any other payment required pursuant to this Agreement;
 - (b) Lessee shall abandon any substantial portion of the Leased Premises;
 - (c) Lessee or any guarantor of Lessee's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee or any guarantor of Lessee's obligations hereunder;

- (d) Lessee or any guarantor of Lessee's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors;
- (d) Lessee shall do or permit to be done any act which results in a lien being filed against the Leased Premises;
- (e) The liquidation, termination, dissolution of Lessee or any guarantor of Lessee's obligations hereunder; or
- (f) Lessee shall be in noncompliance with any other term, provision or covenant of this Agreement, other than those specified in subpart (a) through (f) above.

14.02 **Abandonment of Business by Lessee:** Lessee further agrees that the abandonment for a period of thirty (30) days by Lessee of the conduct of its business activities at the Airport shall terminate Lessee's rights under this Agreement. By so terminating this Agreement, City does not waive any other claim or rights against Lessee. For the purposes of this paragraph, the term "abandonment" shall mean the failure of Lessee to be open for business on the Leased Premises except in the case of war, strike, catastrophe or causes beyond Lessee's control.

14.02 **No Remedy Exclusive:** No remedy herein conferred upon or reserved to the City or Lessee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City and Lessee to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

14.04 **No Waiver of Breach:** City's failure or delay in declaring the existence of an event of default by Lessee shall not be construed as a waiver thereof, nor shall it be construed so as to waive or to lessen the right of the City to insist upon the performance by Lessee of any term, covenant or condition hereof, or to exercise any rights given it on account of any such event of default. A waiver of any particular event of default shall not be deemed to be a waiver of the same, similar of any other subsequent event of default.

14.05 **Expeditious Action:** Notwithstanding any provision as to notice in this Agreement herein contained, if in City's reasonable judgment the continuance of any event of default by Lessee for the full period of the notice to cure the event of default will jeopardize the operation of the Airport or the rights of the City or the other Airport tenants, City may, without notice, elect to perform those acts in respect to which Lessee is in default. Lessee shall reimburse City for any reasonable and necessary costs incurred by the City pursuant to this Section 14.05.

ARTICLE 15. TERMINATION BY LESSEE

- 15.01 **Termination:** Lessee shall have the right to terminate this Agreement in its entirety, and all rights and obligations ensuing therefrom immediately upon the occurrence of the following:
- (a) The issuance of any order, rule or regulation of the Federal Aviation Administration, or its successor Federal Agency, or other competent government authority, Federal or State, or the issuance and execution of any judicial process by any court of competent jurisdiction, materially restricting for a period of at least sixty (60) days, the use of the airport for aeronautical purposes, provided that none of the foregoing is due to any fault of Lessee; or
 - (b) The material restriction of the City's operation of the Airport by action of the Federal Government, or any department or agency thereof, under its wartime or emergency powers, and the continuance thereof for a period of not less than sixty (60) days; provided, however, that without prejudice to the rights of Lessee to terminate as above provided, the City and Lessee may mutually agree to adjust fees and charges; or
 - (c) Material restrictions of the operation of the Airport arising from City's failure to maintain and keep in repair the landing area of the Airport.
- 15.02 **Payment and Termination:** If Lessee terminates this Lease for any of the reasons set forth in (a) through (c) of Section 15.01, City shall promptly repay Lessee any rent previously paid by Lessee attributable to the period following the date of such termination. City shall have the right, in its sole discretion to terminate this Agreement in its entirety for any or no reason upon giving the Lessee one hundred and twenty (120) days written notice.

ARTICLE 16. MISCELLANEOUS PROVISIONS

- 16.01 **Release:** LESSEE HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES CITY, ITS EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.
- 16.02 **Quiet Enjoyment:** Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.
- 16.03 **Force Majeure:** Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots,

rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.

- 16.04 Independent Contractor:** It is expressly understood and agreed that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Lessee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respond at superior shall not apply as between City and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Lessee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder and any provisions in this Agreement which may appear to give City the right to direct Lessee as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that Lessee shall follow the desires of City in the results of the work only. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Lessee's work.
- 16.05 Inspection by City:** City may enter upon the Leased Premises at any reasonable time for any purpose necessary, incidental to or connected with the performance of City's obligations hereunder, or in the exercise of its governmental functions, for fire protection or security purposes, or for inspecting or maintaining the Leased Premises, or doing any and all things City is obligated to do, or which may be deemed by City necessary or desirable for the proper conduct and operation of the Airport or the protection of City's interests.
- 16.06 On-Site Representatives:** Lessee shall select and appoint a representative or representatives for its operations at the Airport. The representatives shall be qualified and experienced, and vested with the full power and authority to act in the name of the Lessee with respect to the method, manner and conduct of the operation of Lessee to be performed under this Agreement. City's on-site representative shall be the City's Director of Airports.
- 16.07 Conformance with Rules and Regulations:** The use of the Airport by Lessee shall be subject to any and all rules, regulations and ordinances which are now in force or which may be hereafter adopted by the City with respect to the operation and use of the Airport, but no such rules, regulations, or ordinances shall increase the Base Rent or Additional Rent payable by Lessee under this Lease or otherwise materially and adversely affect Lessee's tenure of the Leased Premises under this Lease. Furthermore, this Agreement and Lessee's use of the Airport shall be subject to any and all applicable laws, ordinances, resolutions, statutes, rules, regulations or orders of any Federal, State or local governmental authority lawfully exercising jurisdiction over

the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

- 16.08 **Licenses and Permits:** Lessee hereby agrees that it shall, at its own expense and cost, procure and obtain all lawfully required licenses and permits, certificates and other authorizations required by any governmental authority, in connection with or covering the operations or activities permitted to be performed by it under the provisions of this Agreement.
- 16.09 **Notices:** Notices provided for in this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to City: Director of Airports
 P. O. Box 60305
 9506 LaForce Boulevard
 Midland, Texas 79711

With Copy To: City Manager
 P. O. Box 1152
 300 North Loraine
 Midland, Texas 79702

If to Lessee: Empire Airlines, Inc.
 Timothy D. Komberec, President
 2115 Government Way
 Coeur d'Alene, Idaho 83814

The parties may change the representative or address for delivery of notices from time to time by sending written notices to the other party. All notices shall be in writing and effective only upon actual receipt.

- 16.10 **Governing Law and Venue:** All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. This contract shall be governed by the laws of the State of Texas.
- 16.11 **Severability:** If any provision of this Agreement is invalid or unenforceable, this Agreement shall be considered severable as to such provision, and the remainder of this Agreement shall remain valid and binding as though such invalid or unenforceable provision were not included herein.
- 16.12 **Use of Language:** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.
- 16.13 **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which constitute but one and the same instrument.

- 16.14 **Development of the Airport:** Future development, changes, alterations, modifications or improvement to the Airport shall be at the sole discretion of the City, subject only to such notification to Lessee that the Federal Aviation Administration may dictate.
- 16.15 **Subordination to Federal Agreements:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.
- 16.16 **No Exclusivity on Aeronautical Services:** Nothing herein contained shall be construed to grant or authorize the granting of the exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended.
- 16.17 **Termination At Will:** City may terminate this Agreement at will for no or any reason upon giving one hundred and twenty (120) days written notice to the Lessee. The parties to this Lease understand and agree that it is in City's sole discretion to cancel the Lease during the term of the Lease without penalty to City. The parties have no expectation and have received no guarantees that this Lease will not be terminated before October 31, 2025. The parties have bargained for the flexibility of terminating this Lease upon tender of the requisite notice at any time during the term of this Lease. All work and services under this Lease shall be suspended immediately upon termination of the Lease becoming effective.
- 16.18 **Discrimination Prohibited:** The Lessee, for itself, its trustees, officers, legal representatives, successors-in-interest and assigns, as a part of the consideration hereof, agrees (1) that no person on the grounds of race, color, sex, national origin, veteran status or disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, sex, color, national origin, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises and the Airport in compliance with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and to re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement were terminated by its own term pursuant to Section 2.01, above.
- 16.19 **Affirmative Action Program:** Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Agreement.

16.20 **Entire Agreement:** This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed modified, discharged or extended, except by written instrument duly executed by City and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

16.21 **Attorney's Fees:** BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LEASE, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE LEASE. THE LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LEASE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LEASE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), THE LESSEE AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED. LESSEE AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. BY EXECUTION OF THE AGREEMENT, LESSEE HEREBY REPRESENTS AND WARRANTS TO THE CITY THAT LESSEE HAS READ AND UNDERSTOOD THE AGREEMENT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

16.22 **Governmental Immunity:** By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

16.23 **Third-Party Beneficiary:** The City's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2020.

THE CITY OF MIDLAND, TEXAS

EMPIRE AIRLINES, INCORPORATED

BY: _____
Patrick N. Payton, Mayor

BY: _____

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO CONTENT:

Justine Ruff, Director of Airports

STATE OF _____

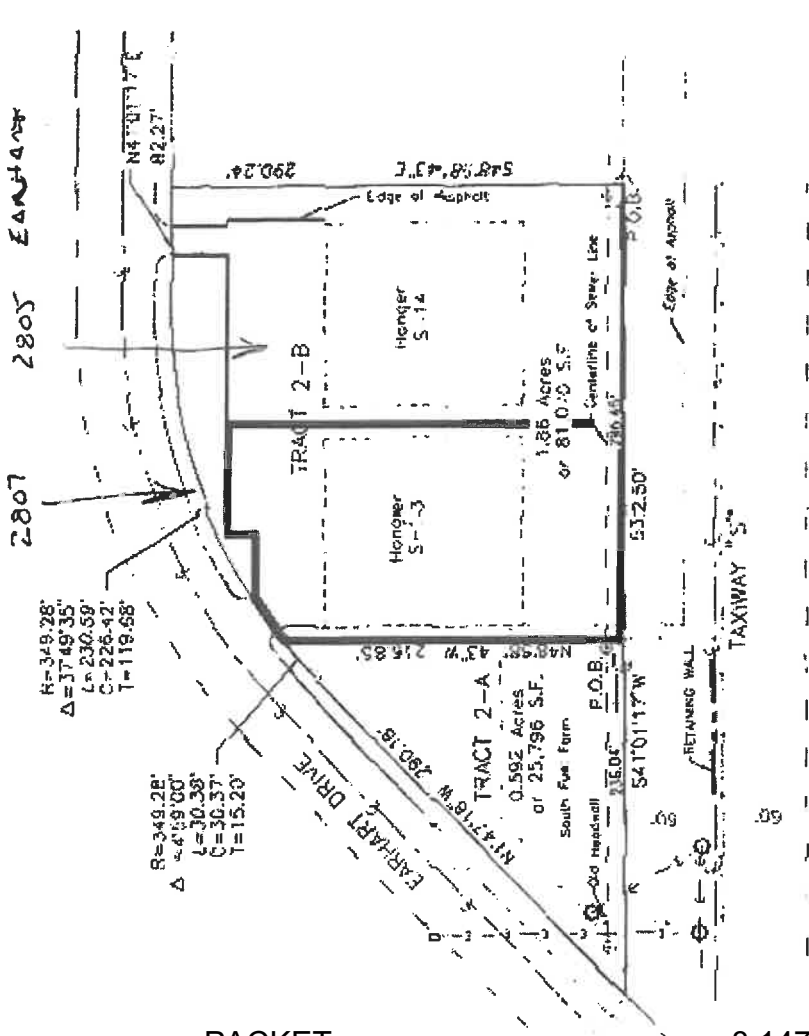
COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this day personally appeared _____, President of EMPIRE AIRLINES INCORPORATED known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of EMPIRE AIRLINES INCORPORATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2020.

Notary Public, State of _____

Signature Page for Commercial Hangar
Lease Agreement Between City of Midland,
Texas and Empire Airlines, LLC.



PLAY AND LEGAL DESCRIPTION FOR TRACTS 2-A AND 2-B LOCATED IN LOT 1, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, (As Recorded in Submet C, Page 117, Plat Records of Midland County) Within Section 8, Block 40, T-2-S, T. & P. RR. Co. Survey Midland County, Texas

Tract 2-A boundary being more particularly described as follows:

BEGINNING at N10°57'50.20" W, 214.372.59' to 1/2" iron rod with a plastic cap marked "PLS 1974" set at the most Easterly corner of this tract from whence the most Easterly corner of Tract 2, as previously surveyed during August of 1953, bears N1°01'17" E, a distance of 216.46 feet, also the Northeast corner of said Tract 2, a distance of 216.46 feet, also the Northeast corner of said Tract 2, a distance of 216.46 feet, also the Northeast corner of said Tract 2, a distance of 216.46 feet.

THENCE S47°01'17" W with a Southeasterly line of said Tract 2, a distance of 216.46 feet to a 1/2" iron rod set at the most Southerly corner of this tract and said Tract 2;

THENCE N1°27'18" W with the Westerly line of said Tract 2 and the Easterly right of way line of Earhart Drive, a distance of 290.18 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northern corner of this tract and Earhart Drive;

THENCE around a curve to the right in a Northerly direction with a radius of 349.28 feet, delta angle of 45°00', and an arc length of 30.36 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northern corner of this tract;

THENCE S45°58'43" E along the projection of a chainlink fence, a distance of 216.85 feet to the Place of Beginning.

Contains 25,796 square square feet or 0.592 acres surface.

Tract 2-B boundary being more particularly described as follows:

CONTINUING at N10°57'50.20" W, 214.372.59' to 1/2" iron rod with a plastic cap marked "PLS 1974" set at the most Easterly corner of this tract and Tract 2, from whence the Northeast corner of said Section 8 bears N1°27'18" E, a distance of 1460.24 feet and N1°18'37" W, a distance of 2096.39 feet;

THENCE S47°01'17" W with a Southeasterly line of said Tract 2, a distance of 290.18 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the most Easterly corner of Tract 2-A as described above and the most Southeasterly corner of this tract;

THENCE N45°58'43" W along a chainlink fence and the projection of the fence, a distance of 216.85 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at a point in a curve for the Westerly corner of this tract and the most Northerly corner of said Tract 2-A;

THENCE around a curve to the right in a Northerly direction along the Easterly right of way line of Earhart Drive, with a radius of 349.28 feet, delta angle of 37°49'35", and an arc length of 230.59 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract and Tract 2;

THENCE N47°01'17" E with the Southeasterly right of way line of Earhart Drive, a distance of 82.27 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northern corner of this tract and said Tract 4;

THENCE S45°58'43" E with the Northeasterly line of said Tract 2, a distance of 290.24 feet to the Place of Beginning.

Contains 81,070 square square feet or 1.860 acres surface.

Bearings and coordinates are relative to the Texas State Plane Coordinate System (NAD83 Zone 16N) with a combined grid factor of 0.99997727. All distances are in feet and bearings are in degrees, minutes and seconds. All distances and bearings are based on average horizontal surface lengths.

A. J. Zuercher, Professional Land Surveyor, do hereby certify that this plat and description are true and correct to the best of my knowledge and belief, as surveyed on the ground on November 9 and 10, 1993.

[Signature]
A. J. Zuercher
Professional Land Surveyor #1974

Prepared for:
AMCON FLIGHT CENTRE, Inc.
Attn: Mr. Charles Perry
P.O. Box 60380
Midland, Texas 79711-380

Prepared by:
PAULER SURVEYING CO.
P.O. Box 60432
Midland, Texas 79711
(817) 550-7810

Drawing files: AvionS.2; Drawn by D. M. Bolew, November 11, 1993, File's Book M.R.A. Misc., Pg. 47
SCALE: 1" = 60 FEET
C = Set 1/2" Iron rod with plastic cap marked "PLS 1974"
O = Powerpole
X = Sewer manhole



City Council Meeting

Item Number: 9
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Morris Williams, Assistant City Manager
Subject: MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND FREESE AND NICHOLS, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS. (CITY MANAGER'S OFFICE)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on September 14, 2020 the execution of an amendment to the professional services agreement between the Midland Development Corporation and Freese and Nichols, Inc., for engineering services, land surveying services, and other services related to certain Midland Development Corporation projects.

Recommended City Council Action:

Approve

Fiscal Impact:

0.00

Discussion:

This amendment serves to extend the effective date of the professional services agreement from December 31, 2020, to December 31, 2021. No additional funds will be added. The projects included in this professional services agreement are construction design of the western extension of Wadley Avenue and select drainage projects, all to City of Midland engineering standards.

**AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
FREESE AND NICHOLS, INC.**

THIS AMENDMENT is made and effective September 14, 2020, by and between the Midland Development Corporation (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and Freese and Nichols, Inc (“Company”).

WHEREAS, MDC and Company entered into that certain Professional Services Agreement for professional engineering services, land surveying services, and services provided in connection therewith on certain MDC projects, dated November 20, 2019 (the “Agreement”), which was approved by the Midland City Council; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, the MDC and Company desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

1) ARTICLE III of the Agreement is hereby amended so as to reassign all responsibilities, rights, and tasks originally delegated the MDC’s Director of Project Development to the MDC’s Executive Director or their designee.

2) ARTICLE IV of the Agreement is hereby amended to read in its entirety as follows:

The term of this Agreement shall be from November 20, 2019, until December 31, 2021, unless (i) the project is completed sooner or (ii) the Agreement is terminated upon the mutual consent of the parties or in accordance with the provisions contained herein. The term of this Agreement may be extended by an amount not to exceed two (2) one-year terms upon the mutual consent of the parties. The consent referenced in this Article shall be evidenced by the signatures of MDC’s Executive Director and Company’s designated representative.

3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by the MDC and Company and the Agreement shall, in all respects, remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

EXECUTED by the duly authorized officials as of the day and year first above written.

MIDLAND DEVELOPMENT
CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

FREESE AND NICHOLS, INC.

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing for the purposes and consideration therein expressed on behalf of Freese and Nichols, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 10
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Morris Williams, Assistant City Manager
Subject: MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND KIMLEY-HORN AND ASSOCIATES, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS. (CITY MANAGER'S OFFICE))

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on September 14, 2020 execution of an amendment to the professional services agreement between the Midland Development Corporation and Kimley-Horn and Associates, Inc., for engineering services, land surveying services, and other services related to certain Midland Development Corporation projects.

Recommended City Council Action:

Approve

Fiscal Impact:

0.00

Discussion:

This amendment serves to extend the effective date of the professional services agreement from December 31, 2020, to December 31, 2021. No additional funds will be added. The projects included in this professional services agreement are construction design of the SH 158 and Briarwood Avenue intersection and the SH 158 and Wadley Avenue intersection, to TxDOT engineering standards.

**AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

THIS AMENDMENT is made and effective September 14, 2020, by and between the Midland Development Corporation (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and Kimley-Horn and Associates, Inc (“Company”).

WHEREAS, MDC and Company entered into that certain Professional Services Agreement for professional engineering services, land surveying services, and services provided in connection therewith on certain MDC projects, dated November 20, 2019 (the “Agreement”), which was approved by the Midland City Council; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, the MDC and Company desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

1) ARTICLE III of the Agreement is hereby amended so as to reassign all responsibilities, rights, and tasks originally delegated the MDC’s Director of Project Development to the MDC’s Executive Director or their designee.

2) ARTICLE IV of the Agreement is hereby amended to read in its entirety as follows:

The term of this Agreement shall be from November 20, 2019, until December 31, 2021, unless (i) the project is completed sooner or (ii) the Agreement is terminated upon the mutual consent of the parties or in accordance with the provisions contained herein. The term of this Agreement may be extended by an amount not to exceed two (2) one-year terms upon the mutual consent of the parties. The consent referenced in this Article shall be evidenced by the signatures of MDC’s Executive Director and Company’s designated representative.

3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by the MDC and Company and the Agreement shall, in all respects, remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

EXECUTED by the duly authorized officials as of the day and year first above written.

MIDLAND DEVELOPMENT
CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing for the purposes and consideration therein expressed on behalf of Kimley-Horn and Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 11
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Morris Williams, Assistant City Manager
Subject: MOTION APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND PARKHILL, SMITH & COOPER, INC., FOR ENGINEERING SERVICES, LAND SURVEYING SERVICES, AND OTHER SERVICES RELATED TO CERTAIN MIDLAND DEVELOPMENT CORPORATION PROJECTS. (CITY MANAGER'S OFFICE)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on September 14, 2020 execution of an amendment to the professional services agreement between the Midland Development Corporation and Parkhill, Smith & Cooper, Inc., for engineering services, land surveying services, and other services related to certain Midland Development Corporation projects.

Recommended City Council Action:

Approve

Fiscal Impact:

0.00

Discussion:

This amendment serves to extend the effective date of the professional services agreement from December 31, 2020, to December 31, 2021. No additional funds will be added. The projects included in this professional services agreement are a regional drainage study associated with southwest Midland, the extension of Avalon Drive, select drainage projects, Spaceport Business Park improvements, and design of the David Mims Parkway in MDC's David Mims Business Park, all to City of Midland engineering standards.

**AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
PARKHILL, SMITH & COOPER, INC.**

THIS AMENDMENT is made and effective September 14, 2020, by and between the Midland Development Corporation (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and Parkhill, Smith & Cooper, Inc (“Company”).

WHEREAS, MDC and Company entered into that certain Professional Services Agreement for professional engineering services, land surveying services, and services provided in connection therewith on certain MDC projects, dated November 20, 2019 (the “Agreement”), which was approved by the Midland City Council; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, the MDC and Company desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

1) ARTICLE III of the Agreement is hereby amended so as to reassign all responsibilities, rights, and tasks originally delegated the MDC’s Director of Project Development to the MDC’s Executive Director or their designee.

2) ARTICLE IV of the Agreement is hereby amended to read in its entirety as follows:

The term of this Agreement shall be from November 20, 2019, until December 31, 2021, unless (i) the project is completed sooner or (ii) the Agreement is terminated upon the mutual consent of the parties or in accordance with the provisions contained herein. The term of this Agreement may be extended by an amount not to exceed two (2) one-year terms upon the mutual consent of the parties. The consent referenced in this Article shall be evidenced by the signatures of MDC’s Executive Director and Company’s designated representative.

3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by the MDC and Company and the Agreement shall, in all respects, remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

EXECUTED by the duly authorized officials as of the day and year first above written.

MIDLAND DEVELOPMENT
CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

PARKHILL, SMITH & COOPER, INC.

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing for the purposes and consideration therein expressed on behalf of Parkhill, Smith & Cooper, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 12
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR THE CASA DE AMIGOS HOME CLEANING PROJECT IN THE AMOUNT OF \$40,000.00; THE PURPOSE OF THIS PROJECT IS TO PROVIDE HOME CLEANING SERVICES TO PROMOTE THE ENVIRONMENTAL AND PHYSICAL HEALTH OF SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution authorizing the execution of a Community Development Block Grant contract with Casa de Amigos for the Home Cleaning Project.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds in the amount of \$40,000 are appropriated to the Home Cleaning Project (700293) from the unappropriated fund balance of the Community Development Block Grant Fund (060).

Discussion:

The program will be administered by Casa de Amigos. A total of 131 seniors and or disable persons are expected to be served during the program year for the express purpose of promoting the environmental and physical health of senior/disabled participants.

Dolet Patel

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR THE CASA DE AMIGOS HOME CLEANING PROJECT IN THE AMOUNT OF \$40,000.00; THE PURPOSE OF THIS PROJECT IS TO PROVIDE HOME CLEANING SERVICES TO PROMOTE THE ENVIRONMENTAL AND PHYSICAL HEALTH OF SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021

WHEREAS, the City of Midland, Texas, has heretofore allocated \$40,000.00 to Casa de Amigos, to provide home cleaning services to senior citizens and disabled individuals on a periodic basis; and

WHEREAS, the City Council finds it to be in the public interest to enter into a contract with Casa De Amigos to provide this service with such grant funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a contract with Casa De Amigos to administer and operate a home cleaning program to provide home cleaning services to senior citizens and disabled individuals on a periodic basis with grant funds received from the United States Department of Housing and Urban Development, said contract to be substantially in the form of that attached hereto as Exhibit "1" and made a part hereof for all legal purposes.

SECTION TWO. That funds in the amount of \$40,000.00 are appropriated in the FY 2021 CDBG Project pursuant to Resolution 2020-127.

SECTION THREE. That the City Comptroller is hereby authorized and directed to make payment to Casa De Amigos pursuant to terms of the contract, not to exceed a total amount of \$40,000.00, upon receipt of proper invoice or statement approved by the City Manager. The final payment must be a minimum of \$3,000.00.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND
CASA DE AMIGOS, INCORPORATED
FOR THE CASA DE AMIGOS HOME CLEANING PROJECT**

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation, herein called "City", and **CASA DE AMIGOS, INC.**, hereinafter called "Corporation";

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Corporation shall perform the Casa de Amigos Home Cleaning Project utilizing Community Development Block Grant (CDBG) funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by the City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from the City, the Corporation is authorized to incur costs against a total amount of FORTY THOUSAND DOLLARS (\$40,00.00). Payments shall be made on a reimbursement basis to the Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to the Corporation upon certification by the Corporation and approval by the Community Development Division of the City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by the Corporation to the City, in a form suitable to City. Final payment on the project must be at least THREE THOUSAND DOLLARS (\$3,000.00), and will not be made until all final project reporting is completed.

III. PROCUREMENT STANDARDS

The Corporation will make project procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS (\$10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS (\$2,000.00) of the above described project, the plans and specifications and other bid documents shall be submitted to the City and reviewed by the City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

CORPORATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CORPORATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CORPORATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CORPORATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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THE CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS

AGREEMENT. WHEN CITY SO DESIRES, THE CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City;
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.
2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation;
3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than \$1,000,000

combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

J. The Corporation certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. The Corporation shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of the Corporation.

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Corporation shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The Corporation shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

The Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City and shall require all contractors and subcontractors to comply with the same. The Corporation hereby agrees as follows:

A. The Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. The Corporation will

also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to the City.

B. The Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. The Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, the Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. The Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. The Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low income City residents and to business concerns which provide economic opportunity to low and very low income persons.

F. The Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. The Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85 and Section 110 of the

Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. The Corporation shall further comply with the conflict of interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. The Corporation will insure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. The Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. The Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. The Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. The Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. The Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. The Corporation shall make available to the City, as determined by the City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. The Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. The Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to the Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

The Corporation shall upon termination or expiration of this Agreement transfer to the City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that the Corporation has on hand at the time of termination. If the Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, the Corporation shall either pay to the City the fair market value of the asset or transfer control of the asset to the City.

X. RECOGNITION OF FUNDING

The Corporation shall provide recognition of CDBG funding in its procurement announcements. The Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the project. The City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROJECT REPORTS

Monthly status reports are to be prepared by the Corporation and submitted in a timely fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An inventory of CDBG acquired assets shall be submitted to the City, in a form suitable to the City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2020, and end September 30, 2021, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City, and is, therefore, expressly contingent on federal funds of the City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CORPORATION SPECIFICALLY AGREES THAT IF THE CORPORATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY

ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

CORPORATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CORPORATION ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE CORPORATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE CORPORATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE CORPORATION AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XVI. DEFAULT PROVISION

In the event that either the Corporation or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, the Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of the Corporation and City in writing.

XVII. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Corporation or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of

this agreement) of such damages, duly verified, within one hundred and fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Corporation relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Corporation that its notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Corporation agrees that the requirements of this entire agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

XX. ASSIGNMENT

Corporation shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion

of the City.

XXI. TERMINATION WITHOUT CAUSE

The City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas. This agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

The City has found that the Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

XXV. COMPLIANCE

The Corporation agrees that it shall comply with Texas Government Code Section 2252.908, as amended. The Corporation agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2020.

CITY OF MIDLAND, TEXAS

CASA DE AMIGOS, INC.

By _____
Patrick N. Payton, Mayor

By _____

Name _____

Title _____

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of CASA DE AMIGOS, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 13
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH MISSION HEALTH CARE, INC., FOR THE MISSION CENTER TAKE HOME TERRIFIC PROJECT IN THE AMOUNT OF \$30,000.00; THE PURPOSE OF THIS PROJECT IS TO PROVIDE DELIVERED EVENING MEALS TO SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution authorizing the execution of a Community Development Block Grant contract with Mission Health Care, Inc. for the Take Home Terrific Meal Program.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds in the amount of \$30,000 are appropriated to the Take Home Terrific Meal Project (700292) from the unappropriated fund balance of the Community Development Block Grant Fund (060).

Discussion:

The program will be administered by Mission Health Care Inc. A total of 50 seniors and or disable persons are expected to be served during the program year.

Dolet Patel

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH MISSION HEALTH CARE, INC., FOR THE MISSION CENTER TAKE HOME TERRIFIC PROJECT IN THE AMOUNT OF \$30,000.00; THE PURPOSE OF THIS PROJECT IS TO PROVIDE DELIVERED EVENING MEALS TO SENIOR CITIZENS AND INDIVIDUALS WITH DISABILITIES; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021

WHEREAS, the City of Midland, Texas, has heretofore allocated \$30,000.00 for the Mission Center Take Home Terrific Project, to provide delivered evening meals to senior citizens and disabled individuals; and

WHEREAS, the City Council finds it to be in the public interest to enter into a contract with Mission Health Care, Inc., to provide this service with such grant funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a contract with Mission Health Care, Inc. to provide delivered evening meals to senior citizens and disabled individuals, said contract to be substantially in the form of that attached hereto as Exhibit "1" and made a part hereof for all legal purposes.

SECTION TWO. That funds in the amount of \$30,000 are appropriated in the FY 2021 CDBG Project pursuant to Resolution 2020-127.

SECTION THREE. That the City Comptroller is hereby authorized and directed to make payment to Mission Health Care, Inc., pursuant to the terms of the contract, not to exceed a total amount of \$30,000.00, upon receipt of proper invoice or statement approved by the City Manager. The final payment must be a minimum of \$3,000.00.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND
MISSION HEALTH CARE, INC.
FOR THE MISSION CENTER TAKE HOME TERRIFIC PROJECT**

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation, herein called "City", and **MISSION HEALTH CARE, INC.**, hereinafter called "Corporation";

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Corporation will carry out the Mission Center Take Home Terrific Project by providing delivered evening meals to senior and/or handicapped households utilizing Community Development Block Grant (CDBG) funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by the City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from the City, the Corporation is authorized to incur costs against a total amount of THIRTY THOUSAND DOLLARS (\$30,000.00). Payments shall be made on a reimbursement basis to the Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to the Corporation upon certification by the Corporation and approval by the Community Development Division of the City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by the Corporation to the City, in a form suitable to City. Final payment on the project must be at least THREE THOUSAND DOLLARS (\$3,000.00), and will not be made until all final project reporting is completed.

III. PROCUREMENT STANDARDS

The Corporation will make project procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS (\$10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS (\$2,000.00) of the above described project, the plans and specifications and other bid documents shall be submitted to the City and reviewed by the City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

CORPORATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CORPORATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CORPORATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CORPORATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

CORPORATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CORPORATION OR CORPORATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CORPORATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY

INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, THE CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall provide for a waiver of subrogation in favor of the City;
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. This insurance shall name the City as an additional insured and shall provide a waiver of subrogation in favor of the City.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable

policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.
2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation;
3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written

notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

J. The Corporation certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. The Corporation shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of the Corporation.

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Corporation shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The Corporation shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

The Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City and shall require all contractors and subcontractors to comply with the same. The Corporation hereby agrees as follows:

A. The Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application,

acceptance and use of federal funds for this federally assisted program. The Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to the City.

B. The Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. The Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, the Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. The Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. The Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low income City residents and to business concerns which provide economic opportunity to low and very low income persons.

F. The Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. The Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. The Corporation will insure that subcontractors for work or construction activity under

this Agreement shall comply with 24 CFR Part 84 and 85 and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. The Corporation shall further comply with the conflict of interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. The Corporation will insure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. The Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. The Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. The Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. The Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. The Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. The Corporation shall make available to the City, as determined by the City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. The Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. The Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to the Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

The Corporation shall upon termination or expiration of this Agreement transfer to the City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that the Corporation has on hand at the time of termination. If the Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, the Corporation shall either pay to the City the fair market value of the asset or transfer control of the asset to the City.

X. RECOGNITION OF FUNDING

The Corporation shall provide recognition of CDBG funding in its procurement announcements. The Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the project. The City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROJECT REPORTS

Monthly status reports are to be prepared by the Corporation and submitted in a timely

fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An inventory of CDBG acquired assets shall be submitted to the City, in a form suitable to the City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2020, and end September 30, 2021 unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City, and is, therefore, expressly contingent on federal funds of the City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CORPORATION SPECIFICALLY AGREES THAT IF THE CORPORATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM

DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

CORPORATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CORPORATION ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE CORPORATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE CORPORATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE CORPORATION AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XVI. DEFAULT PROVISION

In the event that either the Corporation or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the nondefaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, the Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and Corporation have not agreed within such time upon a solution to the default, the nondefaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of the Corporation and City in writing.

XVII. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Corporation or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and fifty (150) days after

the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Corporation relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Corporation that its notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Corporation agrees that the requirements of this entire agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

XX. ASSIGNMENT

Corporation shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

XXI. TERMINATION WITHOUT CAUSE

The City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas. This agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

The City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

XXV. COMPLIANCE

The Corporation agrees that it shall comply with Texas Government Code Section 2252.908, as amended. The Corporation agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2020.

CITY OF MIDLAND, TEXAS

MISSION HEALTH CARE, INC.

By _____
Patrick N. Payton, Mayor

By _____

Name _____

Title _____

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of MISSION HEALTH CARE, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 14
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH SENIOR LIFE MIDLAND, INC., FOR THE SENIOR NUTRITION PROGRAM IN THE AMOUNT OF \$68,000.00; THE PURPOSE OF THIS PROJECT IS TO PROMOTE THE NUTRITIONAL AND PHYSICAL HEALTH OF PROGRAM PARTICIPANTS; THE PROJECT WILL BEGIN ON OCTOBER 1, 2020, AND END ON SEPTEMBER 30, 2021 (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution authorizing the execution of a Community Development Block Grant contract with Senior Life Midland for the Senior Nutrition Project.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds in the amount of \$68,000 are appropriated to the Senior Nutrition Project (700294) from the unappropriated fund balance of the Community Development Block Grant Fund (060).

Discussion:

The program will be administered by Senior Life Midland. A total of 230 seniors are expected to be served during the program year at two locations, South East Senior Center and Casa de Amigos for the express purpose of promoting the nutritional and physical health of program participants.

Dolet Patel

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
COMMUNITY DEVELOPMENT BLOCK GRANT
CONTRACT WITH SENIOR LIFE MIDLAND, INC., FOR
THE SENIOR NUTRITION PROGRAM IN THE
AMOUNT OF \$68,000.00; THE PURPOSE OF THIS
PROJECT IS TO PROMOTE THE NUTRITIONAL AND
PHYSICAL HEALTH OF PROGRAM PARTICIPANTS;
THE PROJECT WILL BEGIN ON OCTOBER 1, 2020,
AND END ON SEPTEMBER 30, 2021**

WHEREAS, the City of Midland, Texas, has heretofore allocated \$68,000.00 to the Senior Nutrition Program, to promote the nutritional and physical health of program participants; and

WHEREAS, the City Council finds it to be in the public interest to enter into a contract with Senior Life Midland, Inc., to provide this service with such grant funds;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a contract with Senior Life Midland, Inc., to administer and operate the Senior Nutrition Program to promote the nutritional and physical health of program participants, said contract to be substantially in the form of that attached hereto as Exhibit "A" and made a part hereof for all legal purposes.

SECTION TWO. That funds in the amount of \$68,000.00 are appropriated in the FY 2021 CDBG Project pursuant to Resolution 2020-127.

SECTION THREE. That the City Comptroller is hereby authorized and directed to make payment to Senior Life Midland, Inc., pursuant to the terms of the contract, not to exceed a total amount of \$68,000.00, upon receipt of proper invoice or statement approved by the City Manager. The final payment must be a minimum of \$5,000.00.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND
SENIOR LIFE MIDLAND, INC., REGARDING THE
SENIOR NUTRITION PROJECT**

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation, herein called "City", and **SENIOR LIFE MIDLAND, INC.**, hereinafter called "Corporation";

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Corporation will carry out the Senior Nutrition Project utilizing Community Development Block Grant (CDBG) funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by the City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from the City, the Corporation is authorized to incur costs against a total amount of SIXTY-EIGHT THOUSAND DOLLARS (\$68,000.00). Payments shall be made on a reimbursement basis to the Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to the Corporation upon certification by the Corporation and approval by the Community Development Division of the City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by the Corporation to the City, in a form suitable to City. Final payment on the project must be at least FIVE THOUSAND DOLLARS (\$5,000.00), and will not be made until all final project reporting is completed.

III. PROCUREMENT STANDARDS

The Corporation will make project procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS (\$10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS (\$2,000.00) of the above described project, the plans and specifications and other bid documents shall be submitted to the City and reviewed by the City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

CORPORATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CORPORATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CORPORATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CORPORATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

CORPORATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CORPORATION OR CORPORATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CORPORATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY

INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, THE CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall provide for a waiver of subrogation in favor of the City;
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. This insurance shall name the City as an additional insured and shall provide a waiver of subrogation in favor of the City.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable

policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.
2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation;
3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written

notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

J. The Corporation certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. The Corporation shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of the Corporation.

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Corporation shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The Corporation shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

The Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City and shall require all contractors and subcontractors to comply with the same. The Corporation hereby agrees as follows:

A. The Corporation will comply with the policies, guidelines and requirements of 24

CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. The Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to the City.

B. The Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. The Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, the Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. The Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. The Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low income City residents and to business concerns which provide economic opportunity to low and very low income persons.

F. The Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. The Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85 and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. The Corporation shall further comply with the conflict of interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. The Corporation will insure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. The Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. The Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. The Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. The Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. The Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. The Corporation shall make available to the City, as determined by the City information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. The Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. The Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to the Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

The Corporation shall upon termination or expiration of this Agreement transfer to the City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that the Corporation has on hand at the time of termination. If the Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, the Corporation shall either pay to the City the fair market value of the asset or transfer control of the asset to the City.

X. RECOGNITION OF FUNDING

The Corporation shall provide recognition of CDBG funding in its procurement announcements. The Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the project. The City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROJECT REPORTS

Monthly status reports are to be prepared by the Corporation and submitted in a timely fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An inventory of CDBG acquired assets shall be submitted to the City, in a form suitable to the City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2020, and end September 30, 2021, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City, and is, therefore, expressly contingent on federal funds of the City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CORPORATION SPECIFICALLY AGREES THAT IF THE CORPORATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY

ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

CORPORATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CORPORATION ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE CORPORATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE CORPORATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE CORPORATION AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XVI. DEFAULT PROVISION

In the event that either the Corporation or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the nondefaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, the Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and Corporation have not agreed within such time upon a solution to the default, the nondefaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of the Corporation and City in writing.

XVII. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Corporation or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of

this agreement) of such damages, duly verified, within one hundred and fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Corporation relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Corporation that its notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Corporation agrees that the requirements of this entire agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

XX. ASSIGNMENT

Corporation shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion

of the City.

XXI. TERMINATION WITHOUT CAUSE

The City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas. This agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

The City has found that the Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

XXV. COMPLIANCE

The Corporation agrees that it shall comply with Texas Government Code Section 2252.908, as amended. The Corporation agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2020

CITY OF MIDLAND, TEXAS

SENIOR LIFE MIDLAND, INC.

By _____
Patrick N. Payton, Mayor

By _____

Name _____

Title _____

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of SENIOR LIFE MIDLAND, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2020.

Notary Public, State of Texas



City Council Meeting

Item Number: 15
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MIDLAND AND WEST TEXAS FOOD BANK FOR THE CARES WEST TEXAS FOOD BANK PROJECT (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution amendment to the agreement for the West Texas Food Bank (COVID-19) shelf-stable food box project between West Texas food bank and the City of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact to the City of Midland Budget.

Discussion:

To perform the CARES West Texas Food Bank Project utilizing Community Development Block Grant (CDBG), by providing nutrition to families in the City of Midland who have lost wages and is impacted by the national health crisis.

A handwritten signature in black ink, which appears to read "Robert F. Palmer".

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AMENDMENT TO THE CONTRACT BETWEEN
THE CITY OF MIDLAND AND WEST TEXAS FOOD
BANK FOR THE CARES WEST TEXAS FOOD BANK
PROJECT**

WHEREAS, the City Council finds it to be in the public interest to authorize an amendment to the contract with West Texas Food Bank which was approved by the Midland City Council by Resolution No. 2020-098;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. The Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an amendment to the contract with West Texas Food Bank, said amendment being substantially in the form attached hereto as Exhibit "1" and incorporated herein for all purposes.

SECTION TWO. Funds in the amount of \$47,000.00 are hereby appropriated from funding provided by HUD pursuant to Resolution 2020-083.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**AMENDMENT TO THE AGREEMENT FOR THE
WEST TEXAS FOOD BANK (COVID-19) SHELF-STABLE FOOD BOX PROJECT
BETWEEN WEST TEXAS FOOD BANK
AND THE CITY OF MIDLAND, TEXAS**

THIS AMENDMENT is made and effective this ___ day of _____, 2020, by and between West Texas Food Bank ("WTFB"), and the City of Midland ("City"), a home-rule municipality.

WHEREAS, WTFB and City entered into that certain Agreement dated May 20, 2020 (the "Agreement"), for the purpose of stating the terms and conditions by which WTFB was to perform the CARES West Texas Food Bank Project utilizing Community Development Block Grant (CDBG) funds. Said Agreement was approved by the Midland City Council by Resolution No. 2020-098; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, WTFB and City desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- 1) Section II. Payment of the Agreement is hereby amended to read in its entirety as follows:

Upon and after the receipt of a notice to proceed from the City, WTFB is authorized to incur costs against a total amount of EIGHTY-THREE THOUSAND DOLLARS and 00/100 (\$83,000.00). Payments shall be made on a reimbursement basis to WTFB for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to WTFB upon certification by WTFB and approval by the Community Development Division of the City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by WTFB to the City, in a form suitable to City. Final payment on the project must be at least THREE THOUSAND DOLLARS (\$3,000.00), and will not be made until all final project reporting is completed.

- 2) Section XII. Term of Agreement of the Agreement is hereby amended to read in its entirety as follows:

The term of this Agreement shall begin April 2, 2020, and end September 30, 2021, unless an extension of time is granted by the City Council.

- 3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by WTFB and City, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

[Signature Page Follows]

WEST TEXAS FOOD BANK

By: _____

Name: _____

Title: _____

THE STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, _____, a notary public, on this day personally appeared _____ an officer of West Texas Food Bank known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of West Texas Food Bank for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY AND SEAL OF OFFICE this the _____ day of _____, 2020

Notary Public, in and for
The State of Texas

Printed Name: _____

My Commission Expires: _____



City Council Meeting

Item Number: 16
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MIDLAND AND CASA DE AMIGOS OF MIDLAND, TEXAS, INC., FOR THE CASA DE AMIGOS - CARES CITYWIDE COMMUNITY SERVICES PROJECT (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution amendment to the agreement for the Casa de Amigos (COVID-19) social services project between Casa de Amigos of Midland, Texas, Inc., and the City of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

No Fiscal Impact on the City Budget.

Discussion:

The Community Services Project utilizing Community Development Block Grant (CDBG) is to assist in rental and utility assistance for low moderate-income families who have had their wages reduced and is in jeopardy of eviction.

Dolet Patel

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AMENDMENT TO THE CONTRACT BETWEEN
THE CITY OF MIDLAND AND CASA DE AMIGOS OF
MIDLAND, TEXAS, INC., FOR THE CASA DE AMIGOS -
CARES CITYWIDE COMMUNITY SERVICES PROJECT**

WHEREAS, the City Council finds it to be in the public interest to authorize an amendment to the contract with Casa de Amigos of Midland, Texas, Inc., which was approved by the Midland City Council by Resolution No. 2020-098;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. The Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an amendment to the contract with Casa de Amigos of Midland, Texas, Inc., said amendment being substantially in the form attached hereto as Exhibit "1" and incorporated herein for all purposes.

SECTION TWO. Funds in the amount of \$48,700.00 are hereby appropriated from funding provided by HUD pursuant to Resolution 2020-083.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Exhibit "1"

**AMENDMENT TO THE AGREEMENT FOR THE
CASA DE AMIGOS (COVID-19) SOCIAL SERVICES PROJECT
BETWEEN CASA DE AMIGOS OF MIDLAND, TEXAS, INC.,
AND THE CITY OF MIDLAND, TEXAS**

THIS AMENDMENT is made and effective this ___ day of _____, 2020, by and between Casa De Amigos of Midland, Texas, Inc. ("Corporation"), and the City of Midland ("City"), a home-rule municipality.

WHEREAS, Corporation and City entered into that certain Agreement dated June 4, 2020 (the "Agreement"), for the purpose of stating the terms and conditions by which Corporation was to perform the Casa De Amigos - CARES Citywide Community Services Project utilizing Community Development Block Grant (CDBG) funds. Said Agreement was approved by the Midland City Council by Resolution No. 2020-098; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, Corporation and City desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- 1) Section II. Payment of the Agreement is hereby amended to read in its entirety as follows:

Upon and after the receipt of a notice to proceed from the City, Corporation is authorized to incur costs against a total amount of ONE HUNDRED FOURTEEN THOUSAND EIGHT HUNDRED SIXTY-ONE and 00/100 (\$114,861.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of the City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to the City, in a form suitable to City. Final payment on the project must be at least THREE THOUSAND DOLLARS (\$3,000.00), and will not be made until all final project reporting is completed.

- 2) Section XII. Term of Agreement of the Agreement is hereby amended to read in its entirety as follows:

The term of this Agreement shall begin April 2, 2020, and end September 30, 2021, unless an extension of time is granted by the City Council.

- 3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by Corporation and City, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

[Signature Page Follows]

CASA DE AMIGOS OF MIDLAND,
TEXAS, INC.

By: _____

Name: _____

Title: _____

THE STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, _____, a notary public, on this day personally appeared _____ an officer of Casa de Amigos of Midland, Texas, Inc., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said Corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY AND SEAL OF OFFICE this the _____ day of _____, 2020

Notary Public, in and for
The State of Texas

Printed Name: _____

My Commission Expires: _____



City Council Meeting

Item Number: 17
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: RESOLUTION AUTHORIZING THE MAYOR, CITY MANAGER, AND CITY ATTORNEY TO ACCEPT AND EXECUTE THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT GRANT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT IN THE AMOUNT OF \$1,441,115.00 (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution for the City of Midland to receive HUD allocations of Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, grant in the amount of \$1,441,115.00 and authorizing the execution of the (CARES Act) funds for CDBG-CV Fiscal Years 2020-2021.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact on the City of Midland Budget.

Discussion:

Consider a resolution for the City of Midland to receive the HUD allocations of Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, grant in the amount of \$1,441,115, and authorizing the execution of the (CARES Act) funds for CDBG-CV Fiscal Years 2020-2021. The CARES Act made available \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds. This amount is the Departments (HUD) next phase of allocations totaling a cumulative amount for all allocation rounds at \$2,011,990.00. The purpose for economic relief is due to the public health crisis, HUD has authorized the use of COVID funds to purchase PPE, rental and utility assistance, homeless services, emergency

food distribution and other public health issues

The CDBG office is requesting the city council authorize the city manager or designate to execute the (CARES Act) contract agreements upon receipt.

A handwritten signature in black ink, appearing to read "Robert Patrick".

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE MAYOR, CITY
MANAGER, AND CITY ATTORNEY TO ACCEPT AND
EXECUTE THE CORONAVIRUS AID, RELIEF, AND
ECONOMIC SECURITY (CARES) ACT GRANT FOR
THE COMMUNITY DEVELOPMENT BLOCK GRANT
IN THE AMOUNT OF \$1,441,115.00**

WHEREAS, the Department of Housing and Urban Development has offered the Community Development Block Grant a grant in the amount of \$1,441,115.00 through the Coronavirus Aid Relief, and Economic Security (CARES) Act for the purpose of providing economic relief to eligible communities affected by the prevention/preparation for and response to the COVID-19 pandemic; and

WHEREAS, the grant funds shall be used to fund Community Development Block Grant programs; and

WHEREAS, the City Council finds it to be in the public interest to accept said grant;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. The Mayor, City Manager, and City Attorney are hereby authorized to execute the Coronavirus Aid, Relief, and Economic Security (CARES) Act Grant, which shall be on file in the office of the City Secretary and referenced by the date and number of this Resolution, thereby accepting the estimated amount of \$1,441,115.00 in funding.

SECTION TWO. The amount of \$1,441,115.00 is hereby received, accepted and appropriated for any uses authorized under the CARES Act and rules established by the Community Block Development Grant Coronavirus (CDBG-CV).

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting “NAY”

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 18
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Glenda Arroyo-Cruz, Planner
Subject: Motion approving a proposed preliminary plat of Hanks South Industrial Park, being a plat of an 80-acre tract of land located in Block 38, T-2-S, B.F. Walcott Survey, Abstract 1156, and a 75-acre tract of land located in Block 38, T-2-S, C.A. Winborn Survey, Abstract 511, Midland County, Texas. (Generally located at the northwest corner of the intersection of South County Road 1160 and East County Road 150. (ETJ, Extraterritorial Jurisdiction) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Watson Professional Group, Inc., is proposing to plat an 80-acre tract of land located in 38, T-2-S, B.F. Walcott Survey, Abstract 1156, and a 75-acre tract of land located in Block 38, T-2-S, C.A. Winborn Survey, Abstract 511, Midland County, Texas, into thirty-two (32) lots for development.

This plat requires City Council Approval per City of Midland Ordinance, Section 11-2-3, Platting Procedures.

11. Approval by the Council.

(a) Approval by the Council shall be required prior to consideration of a final plat by the commission for any preliminary plat which:

(6) Is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site or sites intended for both

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not have significant fiscal impact to the City's budget.

Discussion:

The property is currently within the ETJ, Extraterritorial Jurisdiction.

The Preliminary Plat attached hereto has been circulated to all City departments for review.

BUILDING CODE: (Approved)

ETJ, no jurisdiction.

ENGINEERING: (Approved with Conditions)

Sketch Plat comments not addressed:

ROW: Provide this project's share of a 120-ft total right-of-way (60-ft half-street right-of-way) on major arterial road frontages. Provide 20ftx20ft intersection corner clips at property corners adjacent to all public street intersections. (per transportation)

PAVING: South County Road 1160 is sub-standard, construct to City Standards for entire platted frontage or request a deferral.

WATER: None existing. Construct water to City standards along entire platted frontage, or request a deferral based on located in the South Midland Utility District

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test.

PRO RATA: NONE

SEWER: None existing. Construct wastewater to City standards along entire platted frontage, or request a deferral

DRAINAGE: Drainage study required.

EASEMENTS: Show existing and proposed.

SIDEWALKS: Required with building permit. However, subdivision located in county so request a deferral

DIMENSION: Show Atlas Natural Gas Line going through property.

OTHER: * * *

TRANSPORTATION: (Approved with Conditions)

Sketch Plat comments not addressed:

"Provide this project's share of a 120 ft total right-of-way (60 ft half-street right-of-way) on major arterial road frontages.

Provide 20 ft x 20 ft intersection corner clips at property corners adjacent to all public street intersections."

FIRE: (Approved)

No comments.

CODE COMPLIANCE: (Approved)

Not in the City limits- no oil or gas jurisdiction.

SURVEYOR: (Approved)

Bearing and distance along the north line of plat calculates N 75 58 36 E 2616.53' using coordinates on plat, what is listed on plat differs.

MIDLAND COUNTY – ROAD AND BRIDGE:

They will need to request a driveway permit to tie into SCR 1160.

GIS:

Please see the attached documents for comments.

PLANNING: Approved with Conditions

The technical items need to be addressed:

The Midland Central Appraisal District shows the following owners for the following Parcels:

6110 S CR 1160 – Summers Neal
6116 S CR 1160 – PSI Exchange Holdings LLC
PIN 0344038229501 – Rover Ventures LLC

Please provide ownership or transfer of ownership for the described parcels.

Revise the northeastern boundary of plat. Appears to be off approximately 60 feet.

This plat is larger than 25 acres; therefore, City Council approval is required.

Remove the emboldened line on east side of Section 5, Block 38, C.A. Winborn Survey as it is not part of the plat.

Conditions:

- A. That the technical items listed above are addressed.
- B. That all public improvements above are addressed.
- C. That a drainage study is approved.
- D. All plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filling for recording with the County Clerk of Midland County, Texas.

Attachments:

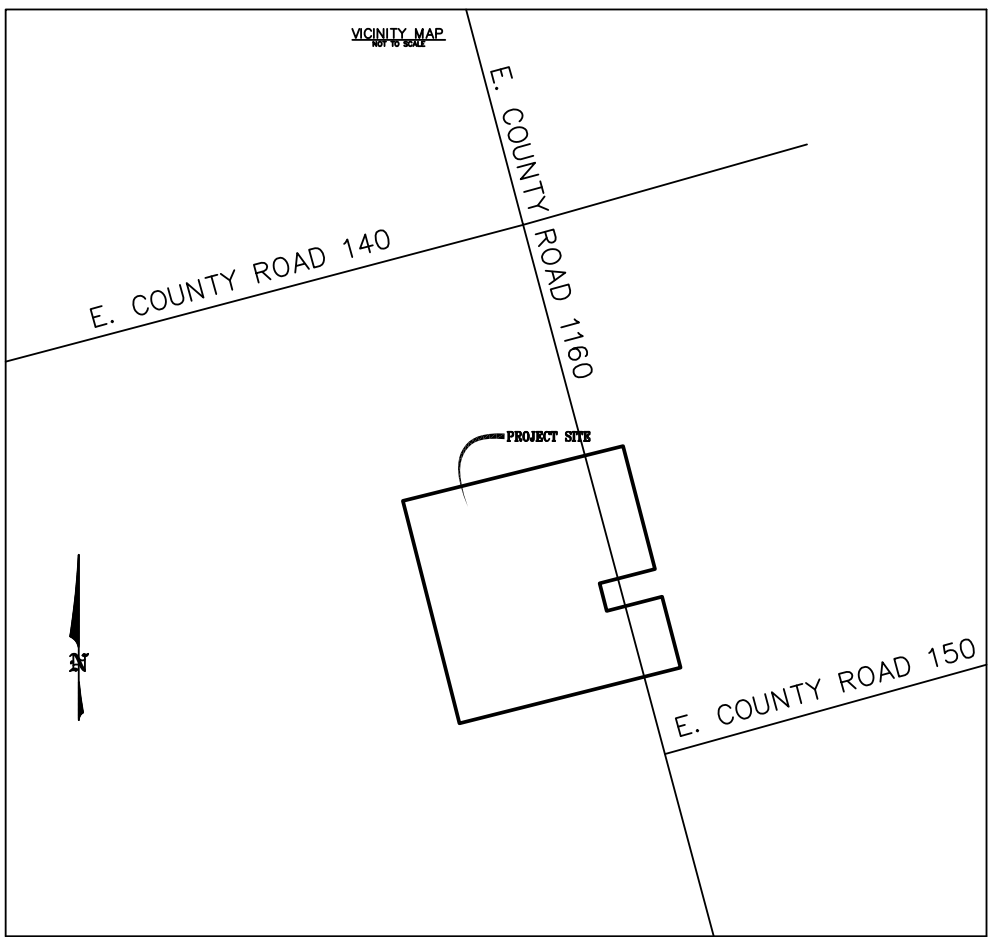
Proposed Preliminary Plat
Application
Maps
GIS comments



City Manager's Office

HANKS SOUTH INDUSTRIAL PARK

BEING A PLAT OF AN 80-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, B.F. WOLCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS



UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

ATMOS ENERGY	PRINT NAME
ONCOR ELECTRIC DELIVERY	PRINT NAME
SUDDENLINK	PRINT NAME
GRANDE COMMUNICATIONS	PRINT NAME
AT&T - TEXAS	PRINT NAME

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, MISS HENLEY HOLDINGS, LP, AND MISS MAYSON, LLC, ARE THE RECORD OWNER OF AN 80-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, B.F. WOLCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT WE, MISS HENLEY HOLDINGS, LP, AND MISS MAYSON, LLC, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN ABOVE DESCRIBED PROPERTY AS "HANKS SOUTH INDUSTRIAL PARK", AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEYS AND EASEMENTS SHOWN HEREON, FOR THE PURPOSE AND CONSIDERATION HEREIN EXPRESSED, AND AN EASEMENT OF INGRESS AND EGRESS FOR TRASH LOCATION, AND LOCATION AND MAINTENANCE OF TRASH CONTAINERS, AND CONDITION SAID EASEMENT THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT OR LOTS UNTIL THE EXACT LOCATION OF SAID CONTAINERS THEREWITH HAVE BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.

MISS HENLEY HOLDINGS, LP _____ DATE _____

MISS MAYSON, LLC _____ DATE _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON _____, 2020
BY TALLIAN THOMPSON

NOTARY PUBLIC _____ PRINTED NAME OF NOTARY _____

MY COMMISSION EXPIRES _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON _____, 2020
BY ALAN THOMPSON

NOTARY PUBLIC _____ PRINTED NAME OF NOTARY _____

MY COMMISSION EXPIRES _____

GENERAL NOTES:

- SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
- BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83, TEXAS CENTRAL ZONE (4203), US FEET.
- ACCORDING TO FEMA MIDLAND COUNTY IS A "MAPPED" COUNTY, BUT ONLY CERTAIN FEDERAL FLOOD INSURANCE RATE MAP PANELS ARE AVAILABLE. THE SUBJECT TRACT DESCRIBED HEREON IS LOCATED IN PART IN ZONE A AND IS WITHIN A 100-YEAR FLOOD HAZARD AREA OF WHICH NO BASE FLOOD ELEVATION HAS BEEN DETERMINED AND IN ZONE X AND IS NOT WITHIN A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL INSURANCE ADMINISTRATION FLOOD BOUNDARY MAP, PANEL NO. 48329C0217F WITH A REVISED DATE OF SEPTEMBER 16, 2005.
- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON.

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "HANKS SOUTH INDUSTRIAL PARK", was approved by the proper action of the Planning and Zoning Commission of the City of Midland, Texas on this the _____ day of _____, 2019

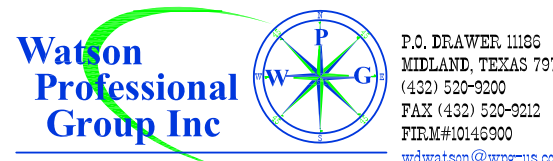
Signed: _____
JOSH SPARKS, CHAIRMAN

Signed: _____
CRISTINA ODENBORG BURNS, SECRETARY



150 0 150 300 FEET
SCALE: 1" = 150'

BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83, TEXAS CENTRAL ZONE (4203), US FEET.



CONSULTING ENGINEERS, LAND SURVEYORS & PLANNERS
JOB NO.: 18-1237-00 DRAFT PW REV. 0
FILE: S:\MIDLAND\150 ACRE SUB

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY LOCATED UNDER THE LICENSED SURVEYOR'S PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF MIDLAND COUNTY, TEXAS.

DATED: _____, 2020

W.D. WATSON
REGISTERED PROFESSIONAL LAND SURVEYOR
#1989

PRELIMINARY

THIS DOCUMENT SHALL NOT BE
RECORDED FOR ANY PURPOSE AND
SHALL NOT BE USED OR VIEWED
OR RELIED UPON AS A FINAL
SURVEY DOCUMENT.

OWNERS:
MISS HENLEY HOLDINGS, LP
TALLIAN THOMPSON, PRESIDENT
P.O. BOX 177
DENNIS, TEXAS 76439

MISS MAYSON LLC
ALAN THOMPSON, PRESIDENT
10521 E. CR 109
MIDLAND TEXAS, 79706

LEGEND

- IRON ROD FOUND
- IRON PIPE FOUND
- PIPE POLE POST FOUND
- UTILITY POLE
- ELECTRIC POLE
- STOP SIGN
- FIRE HYDRANT
- FIBER/TEL EQUIP. BOX/MARKER
- TRAFFIC SIGNAL POWER BOX
- WATER VALVE/METER
- OHE
- X
- P
- BURIED FIBER OPTIC LINE
- BURIED TELEPHONE LINE
- EDGE OF ASPHALT
- EDGE OF ASPHALT
- (BRG-DIST.) RECORD CALL
- B. BUILDING SETBACK LINE
- D.R.M.C. DEED RECORDS OF MIDLAND COUNTY
- P.R.M.C. OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY
- P.R.M.C. PLAT RECORDS OF MIDLAND COUNTY

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS.

NO. _____ CABINET _____

DATE _____ PAGE _____



Preliminary Plat Application

Project Number: SLUB-19-0248
Case Number: P-20-0920

Proposed Subdivision Plat Name: Hanks South Industrial Park

Legal Description (attached sealed Metes and Bounds): BEING A PLAT OF AN 80-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, B.F. WOLCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS

Property Owner Miss Henley Holdings, LP Printed Name: <u>Tallian Thompson</u>		Phone (432) 230-5066 Email <u>thompsonoffice@yahoo.com</u>	
Address <u>PO. Box 177</u>	City <u>Dennis</u>	State <u>TX</u>	Zip <u>76439</u>

Developer (if different than Owner) Printed Name:		Phone () Email	
Address	City	State	Zip

Representative (if acting as Agent, see affidavit on page 2) Firm: <u>WATSON PROFESSIONAL GROUP INC</u> Printed Name: <u>Ashlee Johnson</u>		Phone (432) 520-9200 Email <u>ajohnson@wpg-us.com</u>	
Address <u>PO Drawer 11186</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79702</u>

Current Zoning: <u>ETJ</u>
Reason for Platting: <u>Development/Ownership</u>

Plat Information	Total Acreage: <u>154.813</u>
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ☐ Commercial ☒ Extraterritorial Jurisdiction (ETJ)	
Number of Lots:	Number of Multi-Family Dwelling Units:

Submittal and Fees Items to be submitted with this application form: 1 FOLDED Copy of Dimensioned Plat 1 Extra Copy (11x17) - Digital Files (JPEG & PDF) - Application Fee – Payable to the 'City of Midland'	RECEIVED <u>SEP 11 2020</u> BY: <u>ES</u> <u>sep 1st</u>
--	--

Request for a Development Agreement Do you expect to request a development agreement with the City? ☐ Yes ☐ No If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and **all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved**, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature (by property owner only – authorized agent must sign affidavit below)

Property Owner (signature):

Date: 8/21/2020

Property Owner (printed):

Tallian Thompson

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Ashlee Johnson who, being by me duly sworn, upon oath says: That (s)he is authorized by Tallian Thompson, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Ashlee Johnson
Authorized Agent (signature)

Subscribed and sworn to before me, this 31 day of August, 2020, to certify which witness my hand and seal of office.



Ashlee Danielle Crouch

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

RECEIVED
SEP 01 2020

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ 1 Copy of Dimensioned Plat

☒ Plat in Digital Format (PDF/JPEG)

☒ Application Fee

☒ 1 Copy of Plat (11x17)

Check # 10288

Received By: ES

Date:

RECEIVED
AUG 28 2020

Application will not be considered for scheduling until reviewed by a planner

PACKET

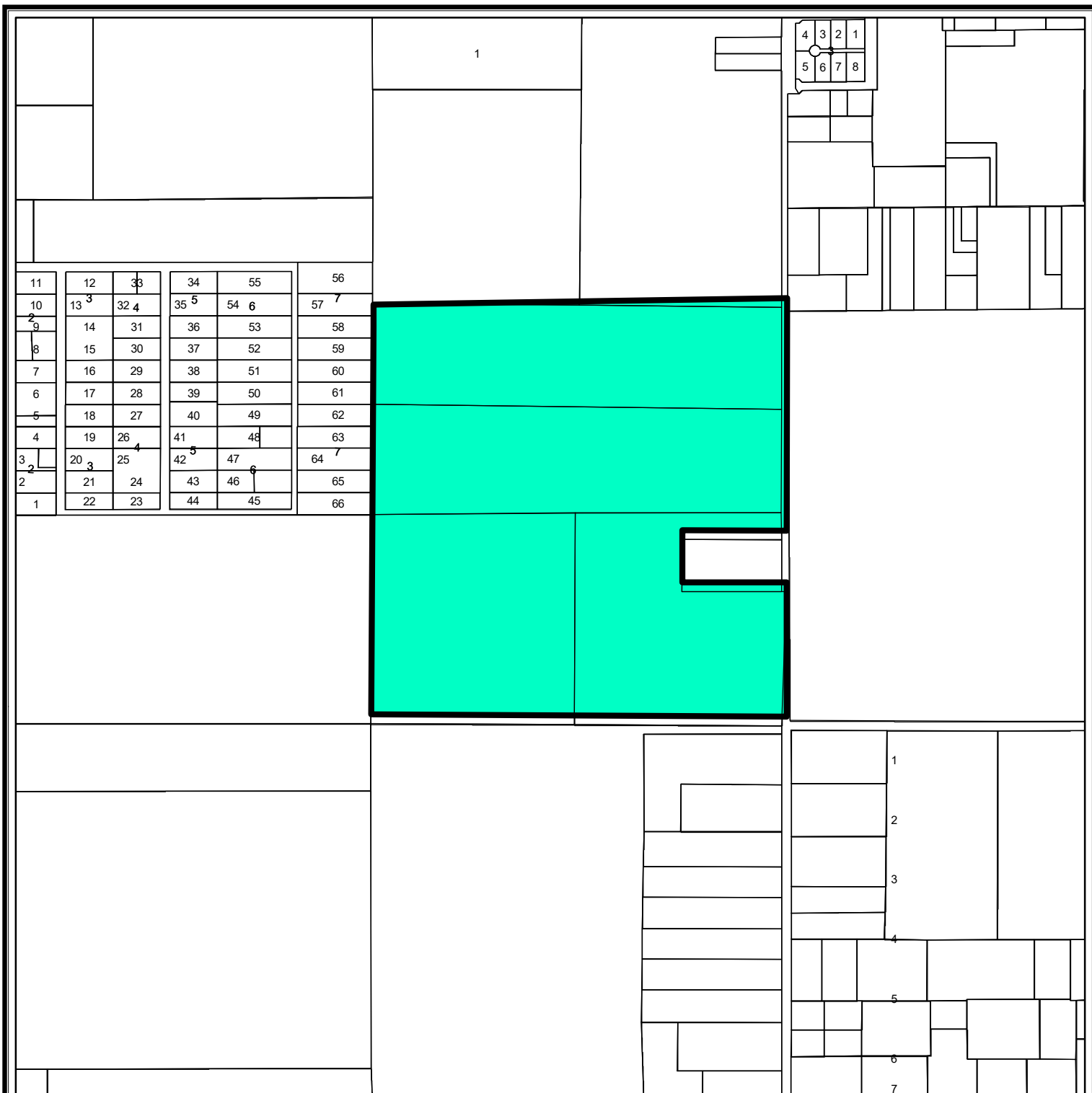
18.238

October 6, 2020

Preliminary Plat Application

2

Revised 07/01/19



LOCATION MAP

SUB-19-0248

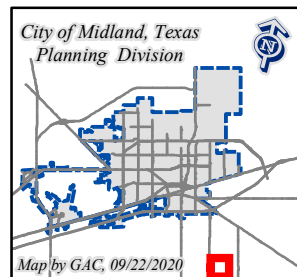
Scale: 1" = 250'

Proposed plat of Hanks South Industrial Park, being a plat of an 80-acre tract of land located in Block 38 T-2-S, B.F. Walcott Survey, Abstract 1156, and a 75-acre tract of land located in Block 38, T-2-S, C.A. Winborn Survey, Abstract 511, Midland County, Texas.

Generally located at the northwest corner of the intersection of South County Road 1160 and East County Road 150. (ETJ, Extraterritorial Jurisdiction)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



October 6, 2020

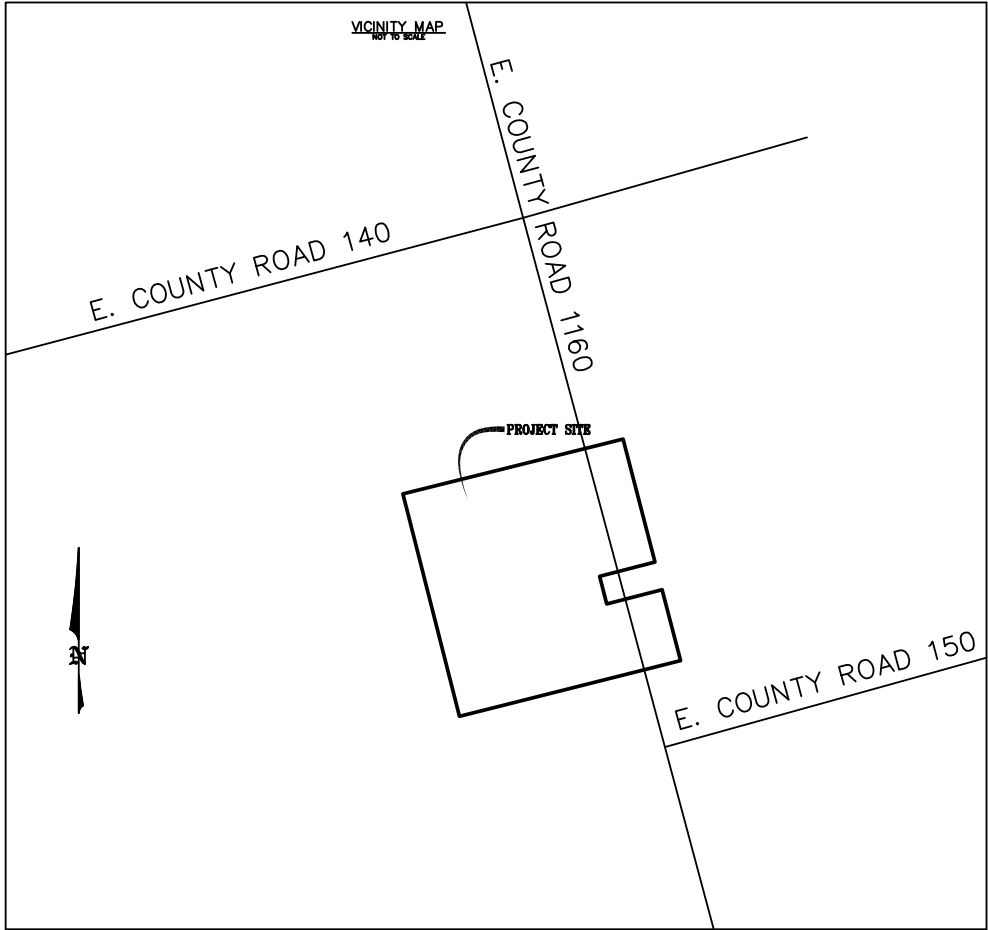
©THE CITY OF MIDLAND - 2020
THIS MAP IS A SUBSTITUTION FOR A
SURVEY AND IS NOT DESIGNED TO
BE USED AS A PRIMARY TOOL IN PERMITTING
OR OTHER DECISIONS BASED SOLELY ON THE
INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.

PACKET

18.239

HANKS SOUTH INDUSTRIAL PARK

BEING A PLAT OF AN 80-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, B.F. WOLCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS



UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

ATMOS ENERGY	PRINT NAME
ONCOR ELECTRIC DELIVERY	PRINT NAME
GRANDE COMMUNICATIONS	PRINT NAME
AT&T - TEXAS	PRINT NAME

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, MISS HENLEY HOLDINGS, LP, AND MISS MAYSON, LLC, ARE THE RECORD OWNER OF AN 80-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, B.F. WOLCOTT SURVEY, ABSTRACT 1156, AND A 75-ACRE TRACT OF LAND OUT OF BLOCK 38, T-2-S, C.A. WINBORN SURVEY, ABSTRACT 511, MIDLAND COUNTY, TEXAS

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT WE, MISS HENLEY HOLDINGS, LP, AND MISS MAYSON, LLC, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN ABOVE DESCRIBED PROPERTY AS "HANKS SOUTH INDUSTRIAL PARK", AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEYS AND EASEMENTS SHOWN HEREON, FOR THE PURPOSE AND CONSIDERATION HEREIN EXPRESSED, AND AN EASEMENT OF INGRESS AND EGRESS FOR TRASH LOCATION, AND LOCATION AND MAINTENANCE OF TRASH CONTAINERS, AND CONDITION SAID EASEMENT THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT OR LOTS UNTIL THE EXACT LOCATION OF SAID CONTAINERS THEREWITH HAVE BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.

MISS HENLEY HOLDINGS, LP _____ DATE _____

MISS MAYSON, LLC _____ DATE _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON _____, 2020
BY TALLIAN THOMPSON

NOTARY PUBLIC _____ PRINTED NAME OF NOTARY _____

MY COMMISSION EXPIRES _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON _____, 2020
BY ALAN THOMPSON

NOTARY PUBLIC _____ PRINTED NAME OF NOTARY _____

MY COMMISSION EXPIRES _____

308.43+60+417.43+60
does not equal 848.84

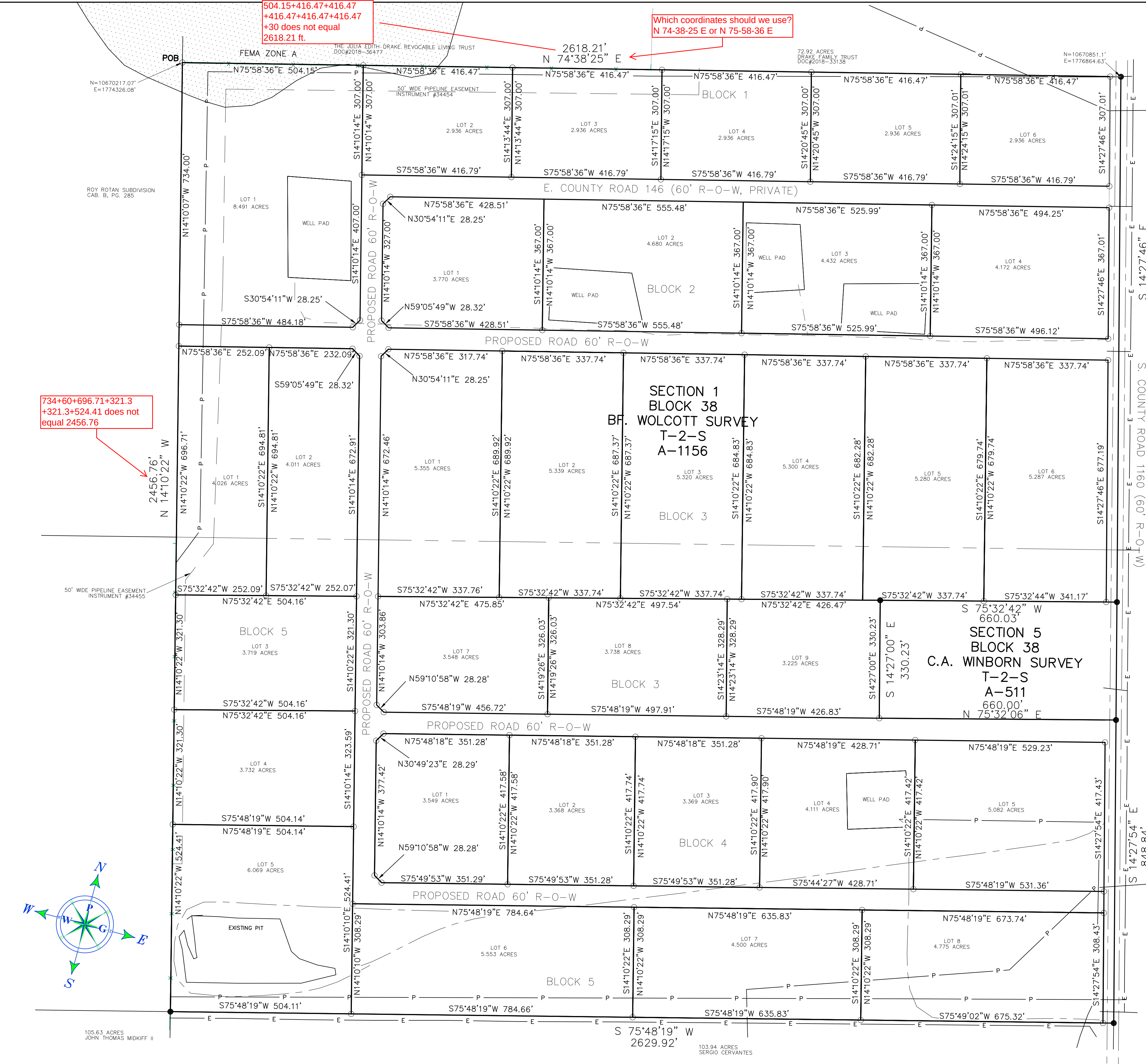
- GENERAL
- SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
 - BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83, TEXAS CENTRAL ZONE (4203), US FEET.
 - ACCORDING TO FEMA MIDLAND COUNTY IS A "MAPPED" COUNTY, BUT ONLY CERTAIN FEDERAL FLOOD INSURANCE RATE MAP PANELS ARE AVAILABLE. THE SUBJECT TRACT DESCRIBED HEREON IS LOCATED IN PART IN ZONE A AND IS WITHIN A 100-YEAR FLOOD HAZARD AREA OF WHICH NO BASE FLOOD ELEVATION HAS BEEN DETERMINED AND IN ZONE X AND IS NOT WITHIN A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL INSURANCE ADMINISTRATION FLOOD BOUNDARY MAP, PANEL NO. 48329C0217F WITH A REVISED DATE OF SEPTEMBER 16, 2005.
 - THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON.

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "HANKS SOUTH INDUSTRIAL PARK", was approved by the proper action of the Planning and Zoning Commission of the City of Midland, Texas on this the _____ day of _____, 2019

Signed: _____
JOSH SPARKS, CHAIRMAN

Signed: _____
CRISTINA ODENBORG BURNS, SECRETARY



150 0 150 300 FEET
SCALE: 1" = 150'
BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83, TEXAS CENTRAL ZONE (4203), US FEET.

W.D. WATSON
REGISTERED PROFESSIONAL LAND SURVEYOR
#1989

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY LOCATED UNDER THE LICENSED SURVEYOR'S PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF MIDLAND COUNTY, TEXAS.

DATED: _____, 2020

W.D. WATSON
REGISTERED PROFESSIONAL LAND SURVEYOR
#1989

PRELIMINARY

THIS DOCUMENT SHALL NOT BE
RECORDED FOR ANY PURPOSE AND
SHALL NOT BE USED OR VIEWED
OR RELIED UPON AS A FINAL
SURVEY DOCUMENT.

OWNERS:
MISS HENLEY HOLDINGS, LP
TALLIAN THOMPSON, PRESIDENT
P.O. BOX 177
DENNIS, TEXAS 76439

MISS MAYSON LLC
ALAN THOMPSON, PRESIDENT
10521 E. CR 109
MIDLAND TEXAS, 79706

LEGEND

IRON ROD FOUND
IRON PIPE FOUND
PIPE FENCE POST FOUND
UTILITY POLE
ELECTRIC POLE
STOP SIGN
FIRE HYDRANT
FIBER/TEL EQUIP BOX/MARKER
TRAFFIC SIGNAL POWER BOX
WATER VALVE/METER
OHE
X
P
BURIED FIBER OPTIC LINE
BURIED TELEPHONE LINE
EDGE OF ASPHALT
RECORD CALL
B.F. WOLCOTT SURVEY, ABSTRACT 1156
C.A. WINBORN SURVEY, ABSTRACT 511
P.L.M.C. PLAT RECORDS OF MIDLAND COUNTY

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS.

NO. _____ CABINET _____

DATE _____ PAGE _____



City Council Meeting

Item Number: 19
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Michael Pacelli, City Traffic Engineer
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR A LOCAL ON-SYSTEM IMPROVEMENT PROJECT WITH THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION ("TXDOT"), FOR THE DESIGN AND CONSTRUCTION OF U-TURN LANES AND LEFT-TURN LANES ON THE EASTBOUND FRONTAGE ROAD AND THE WESTBOUND FRONTAGE ROAD OF LOOP 250 AT MIDKIFF ROAD; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CERTIFY A COPY OF THIS RESOLUTION TO TXDOT (ENGINEERING SERVICES)

Purpose:

To consider a resolution authorizing the execution of an agreement for a Local On-System Improvement Project with the Texas Department of Transportation for the design and construction of U-turn lanes and left-turn lanes on the Eastbound Frontage Road and the Westbound Frontage Road of Loop 250 at Midkiff Road

Recommended City Council Action:

Approve

Fiscal Impact:

None at this time. The project authorized by this agreement was funded by City Council in July 2019 by Resolution 2019-206.

Discussion:

On February 13, 2018, City Council authorized a Chapter 380 Agreement with the Developer, Simon Property Group (a.k.a. Mall at Midland Park, LLC), by Resolution 2018-063. Ultimately, the Developer elected not to proceed with the expansion anticipated with that agreement.

After additional discussions between the Developer and Staff, on October 9, 2018, City Council authorized an additional Pre-Development Agreement by Resolution 2018-422. In part, that agreement provided that the Developer would prepare a traffic impact analysis (TIA) and would deposit \$300,000 with the City as security for traffic improvements to be described in the TIA. The Developer submitted the TIA in November 2018.

Following review of the TIA and subsequent negotiations, on July 9, 2019, City Council approved a third development agreement by Resolution 2019-206. That terminated the original Chapter 380 Agreement and the Pre-Development Agreement, and approved an expansion to the Mall property including approximately 19,400 square feet of additional retail and/or restaurant space. The agreement also allocated the Developer's \$300,000 security deposit as a partial contribution towards a mix of on-site and off-site traffic improvements that were jointly agreed upon by the Developer's team and City Staff.

The on-site improvements consist entirely of rebuilding the northern driveway to Midkiff Rd at the traffic signal (opposite Courtyard Dr) to provide for an increase from two to three exit lanes from the Mall. The Developer is responsible for implementing these improvements and will be reimbursed by the City up to \$100,000 of the \$300,000 deposit. The Developer started work on this project in early September 2020.

The off-site improvements consist of work on both the eastbound and westbound Loop 250 service roads at the Midkiff Rd interchange. This includes converting the existing turnaround lanes to serve as exclusive left-turn lanes (providing dual lefts from the service roads), and widening of the service roads to create new turnaround lanes towards the inside of the freeway. The City is responsible for implementing these improvements.

Per the previously adopted agreement, the off-site improvements are to be funded with 50% from the remaining \$200,000 Developer deposit (up to that maximum amount), and 50% from the City. The Council action in July 2019 allocated the City's share of that funding to a capital project.

The City is currently preparing construction plans for the off-site improvements and intends to bid this work in late-2020 or early-2021. Since Loop 250 is a state highway, an agreement with the Texas Department of Transportation is required for the plans to be approved and the construction to be permitted. This resolution authorizes execution of that agreement and commits the City to fully fund the project cost (which will be done with the mix of City and Developer funds already allocated).

Staff recommends approval.



RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AGREEMENT FOR A LOCAL ON-SYSTEM
IMPROVEMENT PROJECT WITH THE STATE OF
TEXAS, ACTING BY AND THROUGH THE TEXAS
DEPARTMENT OF TRANSPORTATION (“TXDOT”),
FOR THE DESIGN AND CONSTRUCTION OF U-TURN
LANES AND LEFT-TURN LANES ON THE EASTBOUND
FRONTAGE ROAD AND THE WESTBOUND
FRONTAGE ROAD OF LOOP 250 AT MIDKIFF ROAD;
AND AUTHORIZING AND DIRECTING THE CITY
SECRETARY TO CERTIFY A COPY OF THIS
RESOLUTION TO TXDOT**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an Agreement for a Local On-System Improvement Project with the State of Texas (the “State”), acting by and through the Texas Department of Transportation (“TxDOT”), regarding the design and construction of U-turn lanes and left-turn lanes on the eastbound frontage road and the westbound frontage road of Loop 250 at Midkiff Road (“the Project”);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, an Agreement for a Local On-System Improvement Project with the State, acting by and through TxDOT, regarding the Project, said Agreement to be placed on file in the City Secretary’s Office referenced by the number and date of this resolution.

SECTION TWO. That the City hereby confirms its financial commitment to the Project, including payment of cost overruns.

SECTION THREE. That the City Secretary is hereby authorized and directed to certify a copy of this resolution to the Texas Department of Transportation.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 20
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Jose Ortiz, Director
Subject: RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE AN APPROXIMATE 20-ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, LOCATED AT OR ABOUT 6400 WEST U.S. HIGHWAY 80; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID TRACT, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (ENGINEERING SERVICES)

Purpose:

Resolution authorizing funding to acquire, and purchase on behalf of the City of Midland, any real property interests necessary or appropriate, by any instruments of conveyance necessary or appropriate, for the use and benefit of the public for public facilities, drainage, public utility purposes, and for any other ancillary public use as is usual and customary in connection therewith at or near the following described location: 6400 W. Highway 80, Section 2, Block 40 Township 2 South. Midland County, Texas

Recommended City Council Action:

Approve

Fiscal Impact:

The following amounts are hereby appropriated from unappropriated fund balance available in the related funds, \$270,000 in the General Fund, \$135,000 in the Water and Sewer Fund, \$225,000 in the Drainage Fund, \$225,000 in the Solid Waste Fund, and \$45,000 in the Garage Fund.

Discussion:

The property of approximately 20 acres is addressed as 6400 W. Highway 80 and is adjacent to the City acquired right-of-way of 5.35 acres for the Avalon Drive extension project. The property owner has agreed to sell the remaining portion of the property at \$880K which is \$120K below the appraised value. Currently there are multiple city departments that are in need of a secondary location in west Midland to maximize their operational capacities. This site will offer a location to store equipment and material which will minimize traffic exposure along busy urban roadways when transporting equipment/material from the yards located in east Midland. The additional acreage will accommodate future development of the site which include:

1. A future fueling station that will be 7 miles west of the fueling station at the Orchard Yard and 5 miles south of the fueling station under construction at Fire Station 11.
2. The site will serve as a potential water tower site to meet the demands of future growth in the region.
3. The site will allow for the construction of a drainage basin to address existing drainage issues in the area.

Staff recommends approval of this item.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE AN APPROXIMATE 20-ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, LOCATED AT OR ABOUT 6400 WEST U.S. HIGHWAY 80; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID TRACT, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to purchase, on behalf of the City of Midland, an approximate 20-acre tract of land out of Section 2, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, located at or about 6400 West U.S. Highway 80 (the "Property"); and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate, execute and file all documents necessary to purchase the Property, purchase a title insurance policy and hold the closing;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the Property on behalf of the City of Midland.

SECTION TWO. That the City Manager is hereby authorized and directed to negotiate, execute and file all documents necessary to purchase the Property, purchase a title insurance policy and hold the closing.

SECTION THREE. That the sum of \$900,000.00 is hereby appropriated as follows from the unappropriated fund balance available in each related fund: \$270,000.00 from the General Fund; \$135,000.00 from the Water and Sewer Fund; \$225,000.00 from the Drainage Fund; \$225,000.00 from the Solid Waste Fund; and \$45,000.00 from the Garage Fund.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to

pay for said Property, title insurance policy, and closing costs out of funds appropriated herein upon receipt of proper invoice or statement therefor approved by the City Manager.

SECTION FIVE. That the City Secretary is hereby authorized and directed to file, or ensure that the title company files, the instrument of conveyance acquired in accordance with this resolution in the Deed Records of Midland County, Texas. A copy of said instrument of conveyance shall be maintained on file in the City Secretary's Office.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Valbridge
PROPERTY ADVISORS

Appraisal Report

Thomas Perry Property
6400 W. US Highway 80
Midland County, Texas 79706

Report Date: August 6, 2019



FOR:

City of Midland
Mr. John Simmons
Right-Of-Way Manager
300 N. Loraine
Midland TX 79701

Valbridge Property Advisors | Lubbock

2731 81st Street
Lubbock, Texas 79423
(806) 744-1188 phone

valbridge.com

Valbridge File Number:
TX04-19-0130-000

PACKET

20.251

October 6, 2020



2731 81st Street
Lubbock, Texas 79423
(806) 744-1188 phone
valbridge.com

August 6, 2019

Mr. John Simmons
Right-Of-Way Manager
City of Midland
300 N. Loraine
Midland, TX 79701

RE: Appraisal Report
Thomas Perry Property
6400 W. US Highway 80
Midland County, Texas 79706

Dear Mr. Simmons:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The subject property, as referenced above, is located on the west line of the proposed Avalon Drive just north of W. US Highway 80 and is further identified as Assessor's Parcel Number (APN) R000007546. The subject whole property is a 20.136-acre or 877,124-square-foot tract. The subject property is a tract of land that is improved with a single-family residence, storage buildings, canopies, a mobile home, and horse stalls with pens. All of the improvements associated with the subject property are dilapidated and completely depreciated. We do not consider them to contribute to the overall value of the subject property. The subject property was 100% owner occupied upon our appraisal inspection.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The client in this assignment is the City of Midland and the intended user of this report is the City of Midland and no others. The intended use is to assist the client with a whole property acquisition. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- None pertaining to this assignment.

Hypothetical Conditions:

- None pertaining to this assignment.

Based on the analysis contained in the following report, our value conclusion of involving the subject acquisition is summarized as follows:

Compensation Summary	
Whole Acquisition	\$1,006,800
Total Compensation	\$1,006,800

Respectfully submitted,
Valbridge Property Advisors



Drew Nippert
Analyst
Texas License #TX 1340796 Trainee
dnippert@valbridge.com



Mark Luna
Managing Director
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mluna@valbridge.com



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Summary of Salient Facts

Property Identification

Property Name	Thomas Perry Property
Property Address	6400 W. US Highway 80 Midland County, Texas 79706
Latitude & Longitude	31.956609, -102.158994
Tax Parcel Number	R000007546
Property Owner	Thomas W. Perry Estate

Site

Zoning	Not Zoned
FEMA Flood Map No.	483290200F
Flood Zone	Zone X (unshaded)
Land Area	20.136 acres

Valuation Opinions

Highest & Best Use - As Vacant	Industrial Development
Highest & Best Use - As Improved	Redevelopment to Industrial Use
Reasonable Exposure Time	6 to 12 months
Reasonable Marketing Time	6 to 12 months

Value Indications

Approach to Value	As Is
Land Only - Sales Comparison	\$1,006,800

Value Conclusion

Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	July 23, 2019
Value Conclusion	\$1,006,800
	\$50,000 per acre

Our findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- None pertaining to this assignment.

Hypothetical Conditions:

- None pertaining to this assignment.

Aerial and Front Views

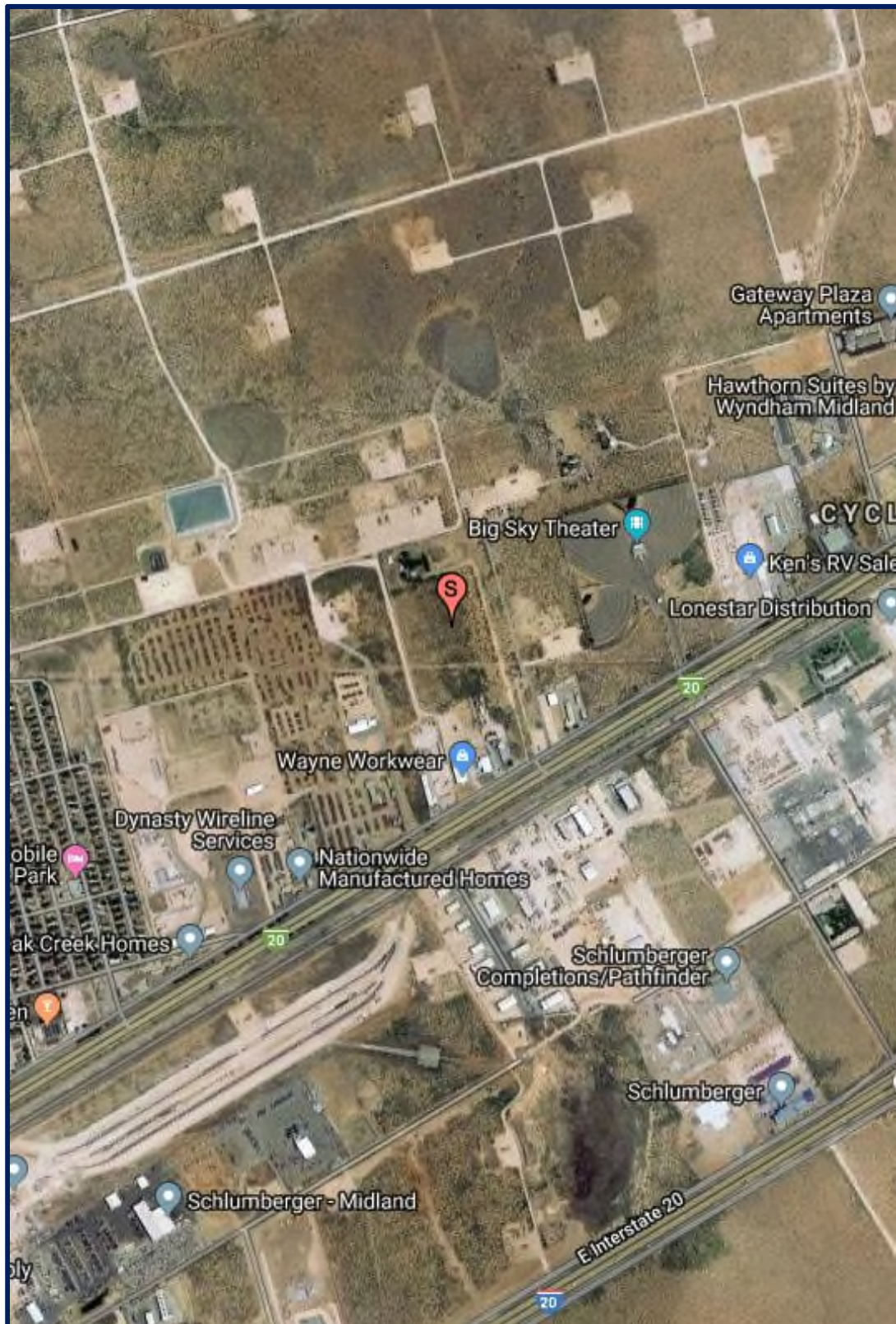
AERIAL VIEW



FRONT VIEW



Location Map



Introduction

Client and Intended Users of the Appraisal

The client in this assignment is the City of Midland and the intended user of this report is the City of Midland and no others.

Intended Use of the Appraisal

The intended use of this report is to assist the client with a whole property acquisition for a City of Midland project.

Real Estate Identification

The subject whole property is located at 6400 W. US Highway 80 in Midland County, Texas 79706. The subject property is further identified by Assessor Parcel Number R000007546. The subject property is a tract of land that is improved with a single-family residence, storage buildings, canopies, a mobile home, and horse stalls with pens. All of the improvements associated with the subject property are dilapidated and completely depreciated. We do not consider them to contribute to the overall value of the subject property. The subject property was 100% owner occupied upon our appraisal inspection.

Legal Description

Whole Property

A 20.136 acre tract of land out of the SE/4 of Section 2, Block 40, Township 2 South, Midland County, Texas.

Use of Real Estate as of the Effective Date of Value

As of the effective date of value, the subject was a tract of land with improvements that are dilapidated and completely depreciated.

Use of Real Estate as Reflected in this Appraisal

The subject is a tract of land with improvements that are dilapidated and completely depreciated. We do not consider the improvements associated with the subject property to contribute to the overall value. As such, only the underlying land was valued.

Ownership of the Property

According to Midland Central Appraisal District, title to the subject property is vested in Thomas W. Perry Estate.

History of the Property

Ownership of the subject property has changed within the past three years. The City of Midland acquired 5.354 acres from the Thomas W. Perry Estate for the proposed Avalon Drive on February 28, 2019. The compensation was \$174,005 of \$32,500 per acre. As of the date of this appraisal, Avalon Drive has not been constructed.

Listings/Offers/Contracts

The subject is not currently listed for sale or under contract for sale.

Type and Definition of Value

We developed opinions of value for the subject property under the following scenarios:

- Market value of the whole property

"Market value," as used herein, is defined by the court case of City of Austin vs. Cannizzo, et al, 267 S.W. 2d 808, 815 (1954), which defines market value as follows:

...the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future.

The market value estimate set forth herein is stated in terms of cash or financing terms equivalent to cash.

Please refer to the Glossary in the Addenda section for additional definitions of terms used in this report.

Valuation Scenario, Property Rights Appraised, and Effective Date of Value

We have appraised the fee simple interest of the subject whole property.

We completed an appraisal inspection of the subject property on July 23, 2019.

Date of Report

The date of this report is August 6, 2019, which is the same as the date of the letter of transmittal.

List of Items Requested but Not Provided

- Boundary Survey

Assumptions and Conditions of the Appraisal

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions

- None pertaining to this assignment.

Hypothetical Conditions

- None pertaining to this assignment.

Scope of Work

The elements addressed in the Scope of Work are (1) the extent to which the subject property is identified, (2) the extent to which the subject property is inspected, (3) the type and extent of data researched, (4) the type and extent of analysis applied, (5) the type of appraisal report prepared, and (6) the inclusion or exclusion of items of non-realty in the development of the value opinion. These items are discussed as below.

The scope of this appraisal is concerned with developing an appraisal report to form an opinion of the market value of the subject property under the following scenario.

1. As-is market value of the fee simple estate of the whole property

Extent to Which the Property Was Identified

The three components of the property identification are summarized as follows:

- Legal Characteristics - The subject was legally identified via appraisal district records.
- Economic Characteristics - Economic characteristics of the subject property were identified via market surveys, discussions with market participants, and our database, as well as a comparison to properties with similar locational and physical characteristics.
- Physical Characteristics - The subject was physically identified via an appraisal inspection that consisted of interior and exterior observations.

Extent to Which the Property Was Inspected

We inspected the subject on July 23, 2019 and did not perform physical measurement of the improvements as they are dilapidated and completely depreciated and do not contribute to the overall value of the subject property.

Type and Extent of Data Researched

We researched and analyzed: 1) market area data, 2) property-specific market data, 3) zoning and land-use data, and 4) current data on comparable listings, sales, and rentals in the competitive market area. We also interviewed people familiar with the subject market/property type.

Type and Extent of Analysis Applied (Valuation Methodology)

We observed surrounding land use trends, the condition of any improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on that highest and best use conclusion.

Appraisers develop an opinion of property value with specific appraisal procedures that reflect three distinct methods of data analysis: the cost approach, sales comparison approach, and income capitalization approach. One or more of these approaches are used in all estimations of value.

- Cost Approach - In the cost approach, the value indication reflects the sum of current depreciated replacement or reproduction cost, land value, and an appropriate entrepreneurial incentive or profit.

- Sales Comparison Approach - In the sales comparison approach, value is indicated by recent sales and/or listings of comparable properties in the market, with the appraiser analyzing the impact of material differences in both economic and physical elements between the subject and the comparables.
- Income Capitalization Approach - In the income capitalization approach, value is indicated by the capitalization of anticipated future income. There are two types of capitalization: direct capitalization and yield capitalization, more commonly known as discounted cash flow (DCF) analysis.
- Approaches Applied - All of these approaches to value were considered. We assessed the availability of data and applicability of each approach to value within the context of the characteristics of the subject property and the needs and requirements of the client. Based on this assessment the Sales Comparison Approach – Land Only was developed. The Cost and Income Capitalization Approaches were not developed as this is an appraisal of land only. Further discussion of the extent of our analysis and the methodology of the approach developed is provided later in the respective valuation sections.

Appraisal Conformity and Report Type

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them. This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Personal Property/FF&E

All furniture, fixtures, and equipment (FF&E) or any other personal property has been excluded from our analysis. The opinion of market value developed herein is reflective of real estate only.

Type and Extent of Analysis Applied

The subject property is a tract of land that is improved with a single-family residence, storage buildings, canopies, a mobile home, and horse stalls with pens. All of the improvements associated with the subject property are dilapidated and completely depreciated. We do not consider them to contribute to the overall value of the subject property. As such, only the underlying land was valued.

Through the analysis process we observed surrounding land use trends, the condition of the improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on the highest and best use conclusion, relying on the Sales Comparison Approach – Land Only. The Cost and Income Capitalization Approaches were not developed as this is an appraisal of land only.

Appraisal Report Type

This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Appraisal Conformity

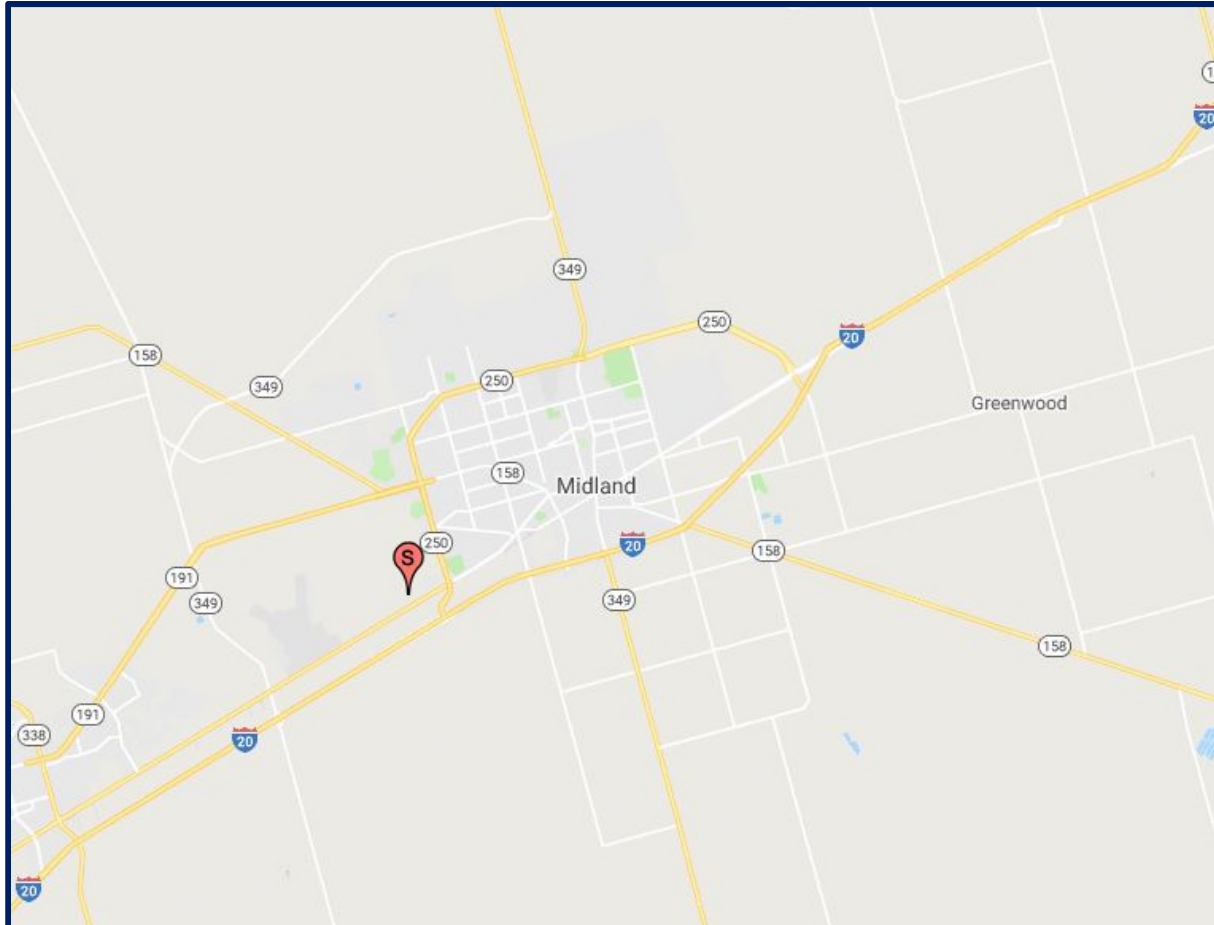
We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Competency Statement

We are aware of no areas in which our appraisal expertise is deficient for the purpose of competently completing this assignment. Please refer to the qualifications as found within this report.

City and Neighborhood Analysis

NEIGHBORHOOD MAP



Neighborhood Location and Boundaries

The subject is located just west of the City of Midland. The area is semi-rural in nature. The neighborhood is considered to be the industrial areas surrounding the City of Midland in Midland County.

Demographics

The following table depicts the area demographics in Midland County within a one-, three-, and five-mile radius from the subject.

Neighborhood Demographics

Radius	1 mile	3 miles	5 miles
Population Summary			
2000 Population	781	15,255	56,127
2010 Population	1,208	17,884	64,577
2019 Population	1,247	23,401	76,843
2024 Population Estimate	1,541	25,769	82,870
Annual % Change (2019 - 2023)	4.3%	1.9%	1.5%
Housing Unit Summary			
2000 Housing Units	606	6,106	23,930
% Owner Occupied	47.9%	65.8%	58.8%
% Renter Occupied	5.9%	22.7%	29.4%
2010 Housing Units	548	6,559	25,962
% Owner Occupied	74.6%	72.3%	63.0%
% Renter Occupied	16.4%	22.5%	30.8%
2019 Housing Units	522	8,639	30,454
% Owner Occupied	68.2%	67.1%	59.3%
% Renter Occupied	27.8%	28.8%	35.7%
2024 Housing Units	642	9,510	32,711
% Owner Occupied	67.6%	67.4%	59.6%
% Renter Occupied	28.8%	29.0%	35.9%
Annual % Change (2019 - 2024)	4.2%	1.9%	1.4%
Income Summary			
2019 Median Household Income	\$47,444	\$67,568	\$76,432
2024 Median Household Income Estimate	\$53,966	\$75,906	\$81,944
Annual % Change	2.6%	2.4%	1.4%
2019 Per Capita Income	\$23,357	\$28,651	\$35,463
2024 Per Capita Income Estimate	\$27,037	\$32,641	\$39,854
Annual % Change	3.0%	2.6%	2.4%

Source: Site-to-Do-Business (STDB Online)

Transportation Access

Within the immediate area of the subject property, transportation access helps define the character of its development. Major travel and commuter routes within the area of the subject property include Interstate Highway 20, US Highway 80, Loop 250, and Texas State Highways 158, 191, and 349. Access to the area is considered good.

Predominant Development

Midland and Odessa serve as the chief service center for major oil drilling and gas production for the Permian Basin. This region includes 20% of the nation's oil and gas reserves. Oil and gas production is the key and focal point for this region's economy. Almost 100% of recent development in the neighborhood has been oil and gas related.

Political Jurisdiction

The subject is not located in the city limits of Midland and is not zoned. The Midland Central Appraisal District sets the assessed values for properties and tax assessments are levied by the various taxing bodies.

Subject's Immediate Area

The immediate area surrounding the subject property is predominantly industrial development with vacant land available for development. A large majority of the vacant land available for development is home to artificial lift systems (pump jacks). There is also retail development in the subject's immediate area which is located along Loop 250 to the east, Interstate Highway 20 to the south, and at the intersection Farm-to-Market Road 1788 and US Highway 80 and Interstate Highway 20.

Conclusion

To our knowledge, there are no current development trends, which would either alter or impair the continued desirability of the neighborhood. Overall, the subject neighborhood is currently in a growth state; however, a long period of low oil prices could negatively affect the subject neighborhood.

Site Description

The following description is based on our appraisal inspection of the subject, assessor records, aeriels, and information provided by the client.

AERIAL – SUBJECT WHOLE PROPERTY



The characteristics of the site are summarized as follows:

Site Characteristics

Location:	The west line of the proposed Avalon Drive just north of W. US Highway 80
Whole Property Land Area:	20.136 Acres or 877,124 SF
Shape:	Generally Rectangular
Topography:	Level
Drainage:	Adequate
Grade:	At street grade
Utilities:	Private well and septic
Off-Site Improvements:	There are no off-site improvements

Interior or Corner:	Interior
Signalized Intersection:	No: No traffic signal at, or near, the site
Excess Land:	None
Surplus Land:	None

Street Frontage / Access

Frontage Road	Primary
Street Name:	Proposed Avalon Drive
Street Type:	Currently unknown
Frontage (Linear Ft.):	1,539

Flood Zone Data

Flood Map Panel/Number:	483290200F
Flood Map Date:	09-16-2005
Flood Zone:	Zones B, C, and X are the flood insurance rate zones that correspond to areas outside the 1-percent annual chance floodplain, areas of 1-percent annual chance sheet flow flooding where average depths are less than 1 foot, areas of 1-percent annual chance stream flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 1-percent annual chance flood by levees. No Base Flood Elevations or depths are shown within this zone. Insurance purchase is not required in these zones.
Site Area in Flood:	None

Other Site Conditions

Soil Type:	Adequate
Environmental Issues:	None known
Easements/Encroachments:	None known that would adversely affect development of the site

Adjacent Land Uses

North:	Native Range Land
South:	Industrial Development
East:	Industrial Development
West:	Industrial Development

Site Ratings

Access:	Good
Visibility:	Good

Zoning Designation

Zoning Jurisdiction:	Not in Zoning Jurisdiction
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Zoning Classification: Not Zoned, Outside the City Limits

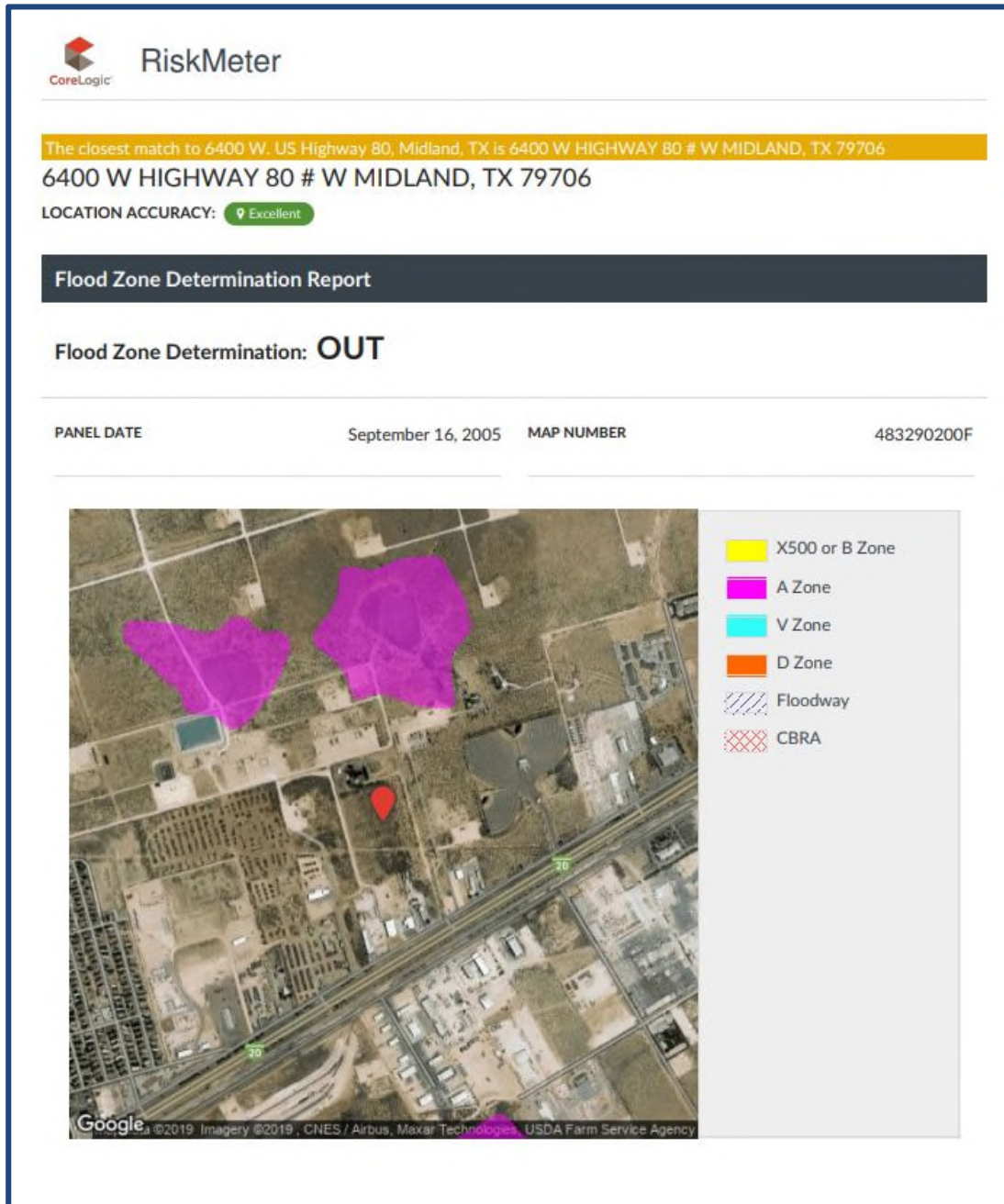
Analysis/Comments on Site

The subject site is located on the west line of the proposed Avalon Drive just north of W. US Highway 80. The immediate area surrounding the subject site is predominantly industrial development with native range land to the north that is home to a number of artificial lift systems (pump jacks). The size and shape of the subject site are adequate to support a variety of uses, with the most likely being industrial development. Although Avalon Drive has yet to be constructed, the subject site does have access from the public right-of-way of Avalon Drive which extends from W. US Highway 80 to the northern boundary of the subject site.

TAX/PLAT MAP



FLOOD MAP



Improvements Description

The subject property is a tract of land that is improved with a single-family residence, storage buildings, canopies, a mobile home, and horse stalls with pens. All of the improvements associated with the subject property are dilapidated and completely depreciated. It was reported by the property owner that the subject improvements have not been occupied since between 1995 and 2000. Based on their current condition, the improvements do not contribute value. As such, only the underlying land was valued. The following table illustrates the characteristics of the subject improvements:

Subject Improvements Breakdown

	Year Built	Size	Effective Age	Economic Life	Depreciation
Single Family Residence	1937	1,978 sf	55 years	55 years	100%
Storage Buildings	1937	1,718 sf	25 years	25 years	100%
Mobile Home	1965	500 sf	45 years	45 years	100%
Canopies	1965	1,080 sf	25 years	25 years	100%
Horse Stalls with Pens	1965	1,500 sf	25 years	25 years	100%

Subject Photos



View of Subject Property



Single-Family Residence



Storage Building



Mobile Home

Additional photos are included in the Addenda

Assessment and Tax Data

Assessment Methodology

The assessed value for the subject property is determined by the Midland Central Appraisal District.

Assessed Values and Property Taxes

The subject's assessed values, applicable tax rates and total taxes, including direct assessments, are shown in the following table:

Ad Valorem Tax Schedule

Tax Parcel Number: R000007546

Midland County Year	Actual 2016	Actual 2017	Actual 2018
Appraised Value			
Land:	\$508,830	\$508,830	\$508,830
Improvements:	\$61,870	\$66,100	\$68,460
Total:	\$570,700	\$574,930	\$577,290
% Change:	N/A	0.7%	0.4%
Assessment Ratio	100.00%	100.00%	100.00%
Assessed Value			
Land:	\$508,830	\$508,830	\$508,830
Improvements:	\$61,870	\$66,100	\$68,460
Total:	\$570,700	\$574,930	\$577,290
% Change:	N/A	0.7%	0.4%
Tax Rate	\$1.548200	\$1.535960	\$1.500930
% Change:	N/A	-0.8%	-2.3%
Millage Rate	per \$100	per \$100	per \$100
Tax Expense			
	Actual 2016	Actual 2017	Actual 2018
Tax Amount:	\$8,836	\$8,831	\$8,665
Special Assessments:	-\$5,419	-\$5,499	-\$5,479
Total Taxes:	\$3,416	\$3,332	\$3,186

Market Analysis

Currently, the industrial market for the Odessa-Midland CSA is not tracked and there are no local reports available. Therefore, we used Costar.com to obtain a look into the industrial market in the Midland area. We obtained the statistics for all of the industrial properties in Odessa-Midland CSA to get a glimpse into the local industrial market. It should be noted that we do not consider the data presented below to be completely accurate; however, it is the best data available. The following tables illustrate the obtained statistics:

Industrial Market Statistics Odessa-Midland CSA Market

Quarter	Odessa-Midland CSA - All Industrial Space				
	Square Feet		Total	Total	Total
	Total	Under	Net	Percent	Rental Rate
	Square Feet	Construction	Absorption	Vacant	(Triple Net)
2018 Q3	16,326,994	171,750	86,067	3.8%	\$14.95 psf
2018 Q2	16,216,244	175,675	306,780	3.7%	\$13.72 psf
2018 Q1	16,111,340	260,579	85,883	4.9%	\$12.92 psf
2017 Q4	15,994,140	197,979	330,433	4.8%	\$12.52 psf
2017 Q3	15,924,023	188,067	30,852	6.4%	\$11.93 psf
2017 Q2	15,844,845	209,045	37,741	6.2%	\$11.54 psf
2017 Q1	15,826,095	146,215	184,313	6.3%	\$10.75 psf
2016 Q4	15,707,245	99,657	-60,716	7.2%	\$10.30 psf
2016 Q3	15,687,035	82,580	-10,906	6.7%	\$10.13 psf
2016 Q2	15,646,619	81,626	98,436	6.4%	\$8.17 psf
2016 Q1	15,638,969	55,566	-18,396	7.0%	\$8.26 psf
2015 Q4	15,628,969	17,650	-29,200	6.8%	\$8.21 psf
2015 Q3	15,622,649	8,720	-88,919	6.6%	\$8.25 psf
2015 Q2	15,559,879	67,490	73,240	5.7%	\$8.28 psf
2015 Q1	15,488,114	132,935	84,501	5.7%	\$8.22 psf
2014 Q4	15,332,714	229,565	76,803	5.3%	\$8.11 psf
2014 Q3	15,229,760	259,754	-93,892	5.2%	\$8.03 psf
2014 Q2	15,196,405	233,709	165,985	4.3%	\$8.00 psf
2014 Q1	15,109,255	148,005	56,000	4.9%	\$8.12 psf

Source: CoStar Group, Inc.

As shown above, there was clearly an economic boom created by an extended period of high oil prices which came to a halt in late 2014 and early 2015. This is illustrated by the level of new construction occurring from the 1st Quarter of 2014 to the 1st Quarter of 2015. Additionally, the vacancy rate was relatively low between those same quarters. Starting in the 2nd Quarter of 2015, the level of new construction began to drop significantly and the vacancy rate began to increase, indicating a softening industrial market in the area. This was a result of the drop in the price of oil during this time.

A conversation with local market participants and real estate brokers who specialize in industrial properties indicated that the local market is quickly improving. The recent increase in the local rig count is evidence of this. They all reported that there is a high demand for industrial property with a current limited supply. This is illustrated by the increase in the level of new development from the 1st Quarter 2017 to the 3rd Quarter 2018. It appears that the majority of the tenants in the buildings that were built from the 1st Quarter 2014 to the 1st Quarter of 2015 were able to remain in business during the economic downturn. This has created the limited supply as the level of new construction dropped from the 2nd Quarter 2015 until the 1st Quarter 2017. They also all reported that due to the limited supply of industrial property, the current rental rates are increasing and range from \$15.00 per square foot annually to over \$20.00 per square foot annually for newer construction.

Overall, it appears that the local industrial market has improved after the sharp decline in the price of oil in late 2014 and early 2015. The level of new construction is increasing, the vacancy rate is declining, and the rental rates are currently increasing. These are all indicators that the market has improved and is currently booming.

Highest and Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

Analysis of Highest and Best Use - As If Vacant

In determining the highest and best use of the property as if vacant, we examine the following criteria: 1) legal permissibility, 2) physical possibility, 3) financial feasibility, and 4) maximum productivity.

Legally Permissible

The subject property is located within an unincorporated area of Midland County. The county does not adhere to a comprehensive zoning ordinance and the subject property is not zoned for any particular use.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description and have been considered. There are no items of a physical nature that would materially limit appropriate and likely development.

Financially Feasible

As previously discussed, there is currently a high demand for industrial property with a limited supply. This is evident by a low and decreasing vacancy rate which has resulted in increased rental rates that support new construction costs. Therefore, we consider speculative, build to suit, and owner occupied development financially feasible.

Maximally Productive

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Considering these factors, the maximally productive use as though vacant is for speculative, build to suit, or owner occupied industrial development.

Conclusion of Highest and Best Use As If Vacant

The conclusion of the highest and best use as if vacant is for speculative, build to suit, or owner occupied industrial development.

Analysis of Highest and Best Use as Improved

In determining the highest and best use of the property as improved, the focus is on three possibilities for the property: 1) continuation of the existing use, 2) modification of the existing use, or 3) demolition and redevelopment of the land.

As previously discussed, the subject improvements associated with the subject property are dilapidated and completely depreciated. We do not consider them to contribute to the overall value

of the subject property. The market value of the property as improved does not exceed the combination of vacant site value less cost of demolition of the improvements. Therefore, demolition and redevelopment of the site is maximally productive.

The subject property is located in an area that is predominantly industrial development. As previously discussed, demand for industrial property is currently high with a limited supply. Therefore, we consider redevelopment into an industrial use to be feasible for the subject property as improved.

Conclusion of Highest and Best Use As Improved

The highest and best use of the subject property, as improved, is redevelopment to an industrial use.

Most Probable Buyer

As of the date of value, the most probable buyer of the subject property is a developer or industrial user.

Land Valuation

Methodology

Site Value is most often estimated using the sales comparison approach. This approach develops an indication of market value by analyzing closed sales, listings, or pending sales of properties similar to the subject, focusing on the difference between the subject and the comparables using all appropriate elements of comparison. This approach is based on the principles of supply and demand, balance, externalities, and substitution, or the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership.

Unit of Comparison

The unit of comparison depends on land use economics and how buyers and sellers use the property. The unit of comparison in this analysis is per usable acre.

Elements of Comparison

Elements of comparison are the characteristics or attributes of properties and transactions that cause the prices of real estate to vary. The primary elements of comparison considered in sales comparison analysis are as follows: (1) property rights conveyed, (2) financing terms, (3) conditions of sale, (4) expenditures made immediately after purchase, (5) market conditions, (6) location, and (7) physical characteristics.

Comparable Sales Data

To obtain and verify comparable sales of vacant land properties, we conducted a search of public records, field surveys, interviews with knowledgeable real estate professionals in the area, and a review of our internal database.

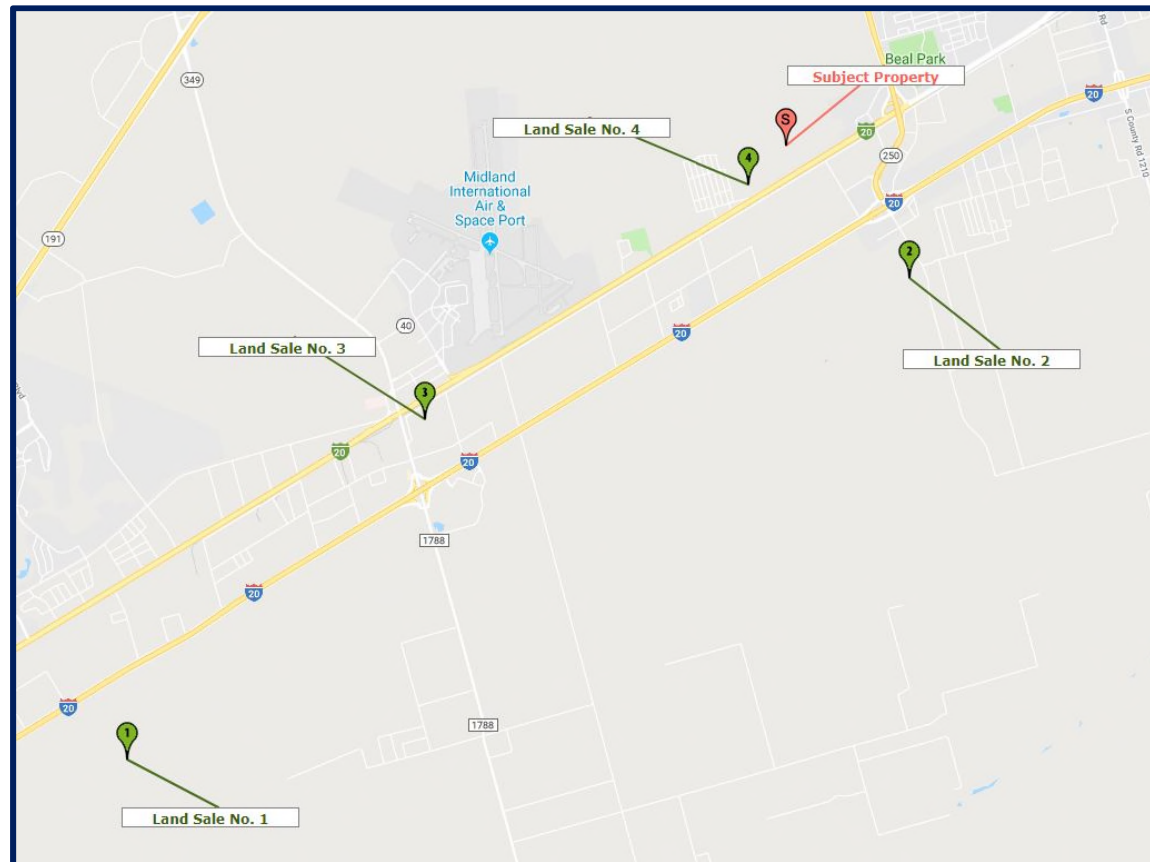
We included four sales in our analysis, as these sales were judged to be the most comparable to develop an indication of market value for the subject property.

The following is a table summarizing each sale comparable and a map illustrating the location of each in relation to the subject. Details of each comparable follow the location map.

Land Sales Summary

Comp. No.	Date of Sale	Usable Acres	Location		Zoning	Proposed Use	Sales Price Actual	Per Acre
1	June-18	15.280	E/L of S. Faudree Road south of Interstate Highway 20	Odessa, Texas	LI	Industrial	\$901,200	\$58,979
2	April-18	33.270	W/L of Antelope Trail south of IH-20	Midland, Texas	Not Zoned	Industrial	\$1,300,000	\$39,074
3	February-18	45.820	SEC of W. Industrial Avenue and FM 1788	Midland, Texas	Not Zoned	Industrial	\$1,995,919	\$43,560
4	June-17	13.610	NEC of W. US Highway 80 and American Airlines Drive	Midland, Texas	Not Zoned	Industrial	\$625,520	\$45,960

COMPARABLE SALES MAP



COMPARABLE 1



Property Identification

Property/Sale ID	1139862/369507
Property Type	Land
Property Name	Urban Group Land
Address	E/L of S. Faudree Road south of Interstate Highway 20
City, State Zip	Odessa, Texas 79765
County	Midland
MSA	Odessa-Midland
Latitude/Longitude	31.876224/-102.260768
Tax ID	R000211823

Transaction Data

Sale Date	6/8/2018	Days on Market	Unknown
Sale Status	Closed	Sale Price	\$901,200
Grantor	SJL Partners	Financing Adj.	\$0
Grantee	Urban Group, LLC	Sale Conditions Adj.	\$0
Property Rights	Fee Simple	Exp. Imm. After Sale	\$0
Financing	Cash to Seller	Non-Realty Adj.	\$0
Conditions of Sale	Typical	Adjusted Price	\$901,200
Recording Number	2018-16474		

Property Description

Gross Acres	15.280	Corner/Interior	Interior
Gross SF	665,597	Shape	Rectangular
Usable Acres	15.280	Topography	Level
Usable SF	665,597	Utilities	Public water and septic
Front Feet	455	Drainage	Adequate
Proposed Use	Industrial	Flood Hazard Zone	Zone X (unshaded)
Street Access	Good	Zoning Jurisdiction	City of Odessa
Rail Access	No	Zoning	LI
Visibility	Good		

Adjusted Sale Price Indicators

\$/Gross Acre	\$58,979	\$/Usable Acre	\$58,979
\$/Gross SF	\$1.35	\$/Usable SF	\$1.35

Verification

Confirmation Source	Cricket Moffet
Phone Number	4325500073

Remarks

This is the sale of a vacant tract of land that is located on the east line of S. Faudree Road south of Interstate Highway 20 in the Leeco Industrial Park. This area is predominantly industrial development and vacant land available for development. The proposed use for this tract of land is industrial development.

COMPARABLE 2



Property Identification

Property/Sale ID	1140904/370130
Property Type	Land
Property Name	Midland Vacant Land
Address	W/L of Antelope Trail south of IH-20
City, State Zip	Midland, Texas 79706
County	Midland
MSA	Odessa-Midland
Latitude/Longitude	31.939343/-102.139898
Tax ID	R000215849

Transaction Data

Sale Date	4/16/2018	Days on Market	Unknown
Sale Status	Closed	Sale Price	\$1,300,000
Grantor	Edwin Hooks	Financing Adj.	\$0
Grantee	Cody and Marcie Crossland	Sale Conditions Adj.	\$0
Property Rights	Fee Simple	Exp. Imm. After Sale	\$0
Financing	Cash to Seller	Non-Realty Adj.	\$0
Conditions of Sale	Typical	Adjusted Price	\$1,300,000
Recording Number	2018-11339		

Property Description

Gross Acres	33.270	Corner/Interior	Interior
Gross SF	1,449,241	Shape	Rectangular
Usable Acres	33.270	Topography	Level
Usable SF	1,449,241	Utilities	Private well and septic
Front Feet	715	Drainage	Adequate
Proposed Use	Industrial	Flood Hazard Zone	Zone X (unshaded)
Street Access	Good	Zoning Jurisdiction	Not in Zoning Jurisdiction
Rail Access	No	Zoning	Not Zoned
Visibility	Good		

Adjusted Sale Price Indicators

\$/Gross Acre	\$39,074	\$/Usable Acre	\$39,074
\$/Gross SF	\$.90	\$/Usable SF	\$.90

Verification

Confirmation Source	Thomas Johnston
Phone Number	4329343333

Remarks

This is the sale of 33.270 acres located on the west line of Antelope Trail. The sites area is a third of a mile south of Interstate Highway 20 in an area consisting of industrial development and vacant land. A Loves Travel Center is located just north of this site.

COMPARABLE 3



Property Identification

Property/Sale ID	1042186/308750
Property Type	Land
Property Name	W. Industrial Avenue Land
Address	SEC of W. Industrial Avenue and FM 1788
City, State Zip	Midland, Texas 79706
County	Midland
MSA	Odessa-Midland
Latitude/Longitude	31.920773/-102.214660
Tax ID	R000007767

Transaction Data

Sale Date	2/16/2018	Days on Market	Unknown
Sale Status	Closed	Sale Price	\$1,995,919
Grantor	Younger Partners, LTD	Financing Adj.	\$0
Grantee	AFD Petroleum (Texas), Inc.	Sale Conditions Adj.	\$0
Property Rights	Fee Simple	Exp. Imm. After Sale	\$0
Financing	Cash to Seller	Non-Realty Adj.	\$0
Conditions of Sale	Motivated Seller	Adjusted Price	\$1,995,919
Recording Number	2018-4243		

Property Description

Gross Acres	45.820	Corner/Interior	Soft Corner
Gross SF	1,995,919	Shape	Rectangular
Usable Acres	45.820	Topography	Level
Usable SF	1,995,919	Utilities	Private well and septic
Front Feet	1,645	Drainage	Adequate
Proposed Use	Industrial	Flood Hazard Zone	Zone X (unshaded)
Street Access	Good	Zoning Jurisdiction	Not in Zoning Jurisdiction
Rail Access	No	Zoning	Not Zoned
Visibility	Good		

Adjusted Sale Price Indicators

\$/Gross Acre	\$43,560	\$/Usable Acre	\$43,560
\$/Gross SF	\$1.00	\$/Usable SF	\$1.00

Verification

Confirmation Source	Thomas Younger
Phone Number	4329349103

Remarks

This is the sale of a vacant tract of land that is located on the southeast corner of W. Industrial Avenue and Farm-to-Market Road 1788. This area is predominantly industrial development and vacant tracts of land available for development.

COMPARABLE 4



Property Identification

Property/Sale ID	10977755/1421818
Property Type	Land
Property Name	W. US Highway 80 Land
Address	NEC of W. US Highway 80 and American Airlines Drive
City, State Zip	Midland, Texas 79706
County	Midland
MSA	Odessa-Midland
Latitude/Longitude	31.951533/-102.164757
Tax ID	R000217137

Transaction Data

Sale Date	6/15/2017	Recording Number	2017-17921
Sale Status	Closed	Days on Market	Unknown
Grantor	Greg and Kevin Ann Burnett	Sale Price	\$625,520
Grantee	DWS Real Estate Holdings, LLC	Financing Adj.	\$0
Property Rights	Fee Simple	Sale Conditions Adj.	\$0
Financing	Cash to Seller	Exp. Imm. After Sale	-\$87,120
Conditions of Sale	Typical	Non-Realty Adj.	\$0
		Adjusted Price	\$538,400

Property Description

Gross Acres	13.610	Corner/Interior	Interior
Gross SF	592,852	Shape	Irregular
Usable Acres	13.610	Topography	Level
Usable SF	592,852	Utilities	Private well and septic
Front Feet	370	Drainage	Adequate
Proposed Use	Industrial	Flood Hazard Zone	Zone X (unshaded)
Street Access	Good	Zoning Jurisdiction	Not in Zoning Jurisdiction
Rail Access	No	Zoning	Not Zoned
Visibility	Good		

Adjusted Sale Price Indicators

\$/Gross Acre	\$39,559	\$/Usable Acre	\$39,559
\$/Gross SF	\$.91	\$/Usable SF	\$.91

Verification

Confirmation Source	Greg Burnett
Phone Number	4326898888

Remarks

This is the sale of a tract of land that is located on the northeast corner of W. US Highway 80 and American Airlines Drive. This area is predominantly industrial development. The seller indicated that the front 5.000 acres sold for a higher price per acre as they were stabilized with crushed asphalt and the back 8.610 acres sold for a lower price per acre than the front five acres. He went on to report that the overall sales price was \$625,520. The average price of crushed asphalt is \$0.40 per square foot which derives a contributory value for the crushed asphalt of \$87,120. This will be deducted from the overall sales price to reflect the sales price of the land only.

Land Sales Comparison Analysis

When necessary, adjustments were made for differences in various elements of comparison, including property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions, location, and other physical characteristics. If the element in comparison is considered superior to that of the subject, we applied a negative adjustment. Conversely, a positive adjustment was applied if inferior. A summary of the elements of comparison follows.

Transaction Adjustments

Transaction adjustments include 1) real property rights conveyed, 2) financing terms, 3) conditions of sale, and 4) expenditures made immediately after purchase. These items, which are applied prior to the market conditions and property adjustments, are discussed as follows:

Real Property Rights Conveyed

Real property rights conveyed influence sale prices and must be considered when analyzing a sale comparable. All of the sales were conveyed in similar interests and no adjustments are warranted.

Financing Terms

The transaction price of one property may differ from that of an identical property due to different financial arrangements. Sales involving financing terms that are not at or near market terms require adjustments for cash equivalency to reflect typical market terms. A cash equivalency procedure discounts the atypical mortgage terms to provide an indication of value at cash equivalent terms. All of the sales were transacted at market terms.

Conditions of Sale

When the conditions of sale are atypical, the result may be a price that is higher or lower than that of a normal transaction. Adjustments for conditions of sale usually reflect the motivations of either a buyer or a seller who is under duress to complete the transaction. Another more typical condition of sale involves the downward adjustment required to a comparable property's for-sale listing price, which usually reflects the upper limit of value.

It was reported by the seller of Sale 3 that the property was sold under market value to fund other developments. He went on to say that he sold the property approximately 20% below market value. Therefore, we have applied an upward 20% adjustment to account for the seller's motivation. The remaining sales are arm's length transactions and no condition of sale adjustments were warranted.

Expenditures Made Immediately After Purchase

A knowledgeable buyer considers expenditures required upon purchase of a property, as these costs affect the price the buyer agrees to pay. Such expenditures may include: costs to demolish and remove any portion of the improvements, costs to petition for a zoning change, and/or costs to remediate environmental contamination.

The relevant figure is not the actual cost incurred, but the cost anticipated by both the buyer and seller. Unless the sales involved expenditures anticipated upon the purchase date, no adjustments to the comparable sales are required for this element of comparison. The parties to these transactions did not anticipate expenditures were required immediately after purchase; therefore, no adjustments were warranted.

However, we have used this category to deduct the contributory value of 5.000 acres of crushed asphalt associated with Sale 4. This was deducted to reflect the sales price of the land only.

Market Conditions Adjustment

Market conditions change over time because of inflation, deflation, fluctuations in supply and demand, or other factors. Changing market conditions may create a need for adjustment to comparable sale transactions completed during periods of dissimilar market conditions.

Discussions with market participants and a review of market data indicated overall market conditions for vacant land properties have been improving with recent transactions confirming this trend. As such, we applied an adjustment to each comparable based on a factor of 5.00% per year.

Property Adjustments

Property adjustments are usually expressed quantitatively as percentages or dollar amounts that reflect the differences in value attributable to the various characteristics of the property. In some instances, however, qualitative adjustments are used. These adjustments are based on locational and physical characteristics and are applied after transaction and market conditions adjustments.

Location

Location adjustments may be required when the locational characteristics of a comparable are different from those of the subject. These characteristics can include general neighborhood characteristics, freeway accessibility, street exposure, corner- versus interior-lot location, neighboring properties, view amenities, and other factors.

The subject site is located on the west line of the proposed Avalon Drive just north of W. US Highway 80 with good access and good visibility. The immediate area surrounding the subject site is predominantly industrial development with native range land to the north that is home to a number of artificial lift systems (pump jacks).

Sales 1, 2, and 4 are all located in areas with similar surrounding uses. Additionally, they only have frontage on one thoroughfare and have similar access and visibility when compared to that of the subject property. Overall, we consider the locations of these sale comparables to be similar when compared to the location of the subject property.

Sale 3 is located at the intersection of Farm-to-Market Road 1788 and US Highway 80. This sale comparable has frontage on two thoroughfares and has a corner location that is formed by two major thoroughfares. Overall, we consider the location of this sale comparable to be superior when compared to the location of the subject property.

Size

The size adjustment addresses variance in the physical size of the comparables and that of the subject, as a larger parcel typically commands a lower price per unit than a smaller parcel. This inverse relationship is due, in part, to the principle of "economies of scale."

The subject whole property consists of 20.136 acres of useable land. Sales 1, 2, and 4 are similar enough in size when compared to the subject property and we consider them to be similar when

compared to the subject property in this category. Sale 3 is larger than the subject property and is inferior when compared to the subject property in this category.

Shape/Depth

The subject whole property consists of a generally rectangular-shaped tract that is considered to be similar when compared to the sale comparables as the subject property and all of the sale comparables have similar development potential.

Frontage/Access

The subject property and all of the sale comparables have adequate amounts of frontage. Industrial users rarely base a purchasing decision solely on a property's frontage characteristics. Additionally, any difference in frontage was considered in the location adjustment.

Utilities

The subject property is located outside the city limits of Midland and does not have access to public water or sewer. Sales 2, 3, and 4 are also located outside the city limits of Midland and do not have access to public water or sewer. We consider these sale comparables to be similar when compared to the subject property in this category. Sale 1 is located in an industrial park that has access to all public services. We consider this to be superior when compared to the subject property in this category.

Flood Zone

A property's location within flood zone areas is typically a negative factor due to the increased costs of raising improvements up out of the floodplain, as well as additional insurance costs associated with improvements.

The subject property and all of the sale comparables are located outside the 100-year flood plain and are similar.

Zoning

The highest and best use of sale comparables should be very similar to that of the subject property. When comparables with the same zoning as the subject are lacking or scarce, parcels with slightly different zoning, but a highest and best use similar to that of the subject may be used as comparables. These comparables may require an adjustment for differences in utility if the market supports such adjustment.

The subject property is located outside the city limits of Midland and is not zoned. All of the sale comparables are similar when compared to the subject property in this category.

Summary of Adjustments

Presented on the following page is a summary of the adjustments made to the sale comparables. As noted earlier, these qualitative adjustments were based on our market research, best judgment, and experience in the appraisal of similar properties.

Land Sales Adjustment Grid

	Subject	Sale # 1	Sale # 2	Sale # 3	Sale # 4
Sale ID		369507	370130	308750	1421818
Date of Value & Sale	July-19	June-18	April-18	February-18	June-17
Unadjusted Sales Price		\$901,200	\$1,300,000	\$1,995,919	\$625,520
Usable Acres	20.136	15.280	33.270	45.820	13.610
Unadjusted Sales Price per Usable Acre		\$58,979	\$39,074	\$43,560	\$45,960
Transactional Adjustments					
Property Rights Conveyed	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>
Financing Terms	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>
Conditions of Sale	<i>Typical</i>	<i>Typical</i>	<i>Typical</i>	<i>Motivated Seller</i>	<i>Typical</i>
Adjustment		-	-	20.0%	-
Expenditures after Sale		\$0	\$0	\$0	(\$87,120)
Adjustment		-	-	-	-13.9%
Market Conditions Adjustments					
Elapsed Time from Date of Value		<i>1.12 years</i>	<i>1.27 years</i>	<i>1.43 years</i>	<i>2.10 years</i>
Market Trend Through	July-19	5.6%	6.3%	7.2%	10.5%
Analyzed Sales Price		\$62,292	\$41,553	\$56,010	\$43,721
Physical Adjustments					
Location	<i>6400 W. US Highway 80</i>	<i>E/L of S. Faudree Road south of Interstate Highway 20</i>	<i>W/L of Antelope Trail south of IH-20</i>	<i>SEC of W. Industrial Avenue and FM 1788</i>	<i>NEC of W. US Highway 80 and American Airlines Drive</i>
	<i>Midland, Texas</i>	<i>Odessa, Texas</i>	<i>Midland, Texas</i>	<i>Midland, Texas</i>	<i>Midland, Texas</i>
Relative Comparison		Similar	Similar	Superior	Similar
Size	<i>20.136 acres</i>	<i>15.280 acres</i>	<i>33.270 acres</i>	<i>45.820 acres</i>	<i>13.610 acres</i>
Relative Comparison		Similar	Similar	Inferior	Similar
Shape/Depth	<i>Generally Rectangular</i>	<i>Rectangular</i>	<i>Rectangular</i>	<i>Rectangular</i>	<i>Irregular</i>
Relative Comparison		Similar	Similar	Similar	Similar
Frontage	<i>Primary - 1538.66 feet</i>	<i>Primary - 455 feet</i>	<i>Primary - 715 feet & Secondary - 715 feet</i>	<i>Primary - 1,645 feet & Secondary - 990 feet</i>	<i>Primary - 370 feet</i>
Relative Comparison		Similar	Similar	Similar	Similar
Utilities	<i>Private well and septic</i>	<i>Public water and septic</i>	<i>Private well and septic</i>	<i>Private well and septic</i>	<i>Private well and septic</i>
Relative Comparison		Superior	Similar	Similar	Similar
Floodplain	<i>Zone X (unshaded)</i>	<i>Zone X (unshaded)</i>	<i>Zone X (unshaded)</i>	<i>Zone X (unshaded)</i>	<i>Zone X (unshaded)</i>
Relative Comparison		Similar	Similar	Similar	Similar
Zoning	<i>Not Zoned</i>	<i>LI</i>	<i>Not Zoned</i>	<i>Not Zoned</i>	<i>Not Zoned</i>
Relative Comparison		Similar	Similar	Similar	Similar
Overall Net Relative Comparison		Superior	Similar	Superior	Similar

Conclusion

From the market data available, we used four land sales in competitive market areas which were adjusted based on pertinent elements of comparison. The following table ranks the sale comparables in relation to the subject property:

Sale	Analyzed Sales Price	Overall Net Relative Comparison
1	\$62,292	Superior
3	\$56,010	Superior
Subject		
4	\$43,721	Similar
2	\$41,553	Similar

Based on the preceding analysis, we summarized qualitative adjustments to the comparable sales on the preceding adjustment grid. These adjustments are based on our market research, best judgement, and experience in the appraisal of similar properties. We adjusted the comparable sales based on pertinent elements of comparison as discussed previously and summarized the adjustments on the preceding grid.

Based on the adjustments and the activity in the market, a unit value for the subject whole property of \$50,000 per usable acre is reasonable. This indicates a whole property value of the subject tract of **\$1,006,800**.

We contacted Bill Scott, with Real Estate One, and his opinion was that a reasonable range for the subject property was between \$35,000 and \$45,000 per acre. We also spoke with Tom Younger, with Midland 1st Choice Real Estate and the seller of Sale 3. He reported that he believed the subject property was "at least worth \$1.00 per square foot or \$43,560 per acre". We are at the top-end of Mr. Scott's range and ultimately towards the middle of Mr. Younger's range. Overall, we are in the middle of Mr. Scott's and Mr. Younger's opinions of value and we consider these conversations to further support our value conclusion.

The land value indication is summarized as follows:

Land Value Indication

Market Value Opinion

20.136 acres	x	\$50,000 per acre	=	\$1,006,800
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Compensation Estimate

To reach a final opinion of value, we considered the reliability and relevance of each value indication based upon the quality of the data and applicability of the assumptions underlying each approach. The Cost and Income Capitalization Approaches were not developed as this is an appraisal of land only. As such, only the Sale Comparison – Land Only approach was developed.

The value of the whole subject property is estimated below. Total just compensation due the property owner is illustrated as follows:

Compensation Summary	
Whole Acquisition	\$1,006,800
Total Compensation	\$1,006,800

General Assumptions and Limiting Conditions

This appraisal is subject to the following general assumptions and limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Lubbock will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Lubbock is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions. Appraiser is not responsible for determining whether the date of value requested by Client is appropriate for Client's intended use.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.

11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Lubbock and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but third-parties not listed as an intended user on the face of the appraisal or the engagement letter may not rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Lubbock.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. The flood maps are not site specific. We are not qualified to confirm the location of the subject property in relation to flood hazard areas based on the FEMA Flood Insurance Rate Maps or other surveying techniques. It is recommended that the client obtain a confirmation of the subject property's flood zone classification from a licensed surveyor.
20. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income and Expense Projection" are anticipated.
21. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

22. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated. Should the client have concerns in these areas, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or expertise to make such inspections and assumes no responsibility for these items.
23. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire more precise measurement, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer) as an alternative source. If this alternative measurement source reflects or reveals substantial differences with the measurements used within the report, upon request of the client, the appraiser will submit a revised report for an additional fee.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, upon request of the client, the appraiser will submit a revised report for an additional fee.
27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, and a review of the final plans and specifications reveals substantial differences upon request of the client the appraiser will submit a revised report for an additional fee.

28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Lubbock both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Lubbock and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Valbridge Property Advisors | Lubbock or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by such claimant shall be the amount actually received by Valbridge Property Advisors | Lubbock for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | Lubbock shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Lubbock. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Lubbock and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Lubbock harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Lubbock in such action, regardless of its outcome.
37. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Valbridge Property Advisors | Lubbock. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
38. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.

Certification – Drew Nippert

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Drew Nippert has personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification, unless otherwise noted.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the Standards and Ethics Education Requirement for Candidates/Practicing Affiliates of the Appraisal Institute.



Drew Nippert

Analyst

Texas License #TX 1340796 Trainee

dnippert@valbridge.com

Certification – Mark Luna

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Mark Luna has personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification, unless otherwise noted.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the Standards and Ethics Education Requirement for Candidates/Practicing Affiliates of the Appraisal Institute.



Mark Luna
Managing Director
Texas License #TX-1380067-G
mluna@valbridge.com

Certification – Michael Divin, MAI

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has not performed any services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Michael Divin has not personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification, unless otherwise noted.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the continuing education program for Designated Members of the Appraisal Institute.



Mike Divin, MAI
Senior Managing Director
Texas License #TX-1320831-G
mdivin@valbridge.com

Addenda

Subject Photos

Property Owner Notice

Glossary

Qualifications

- Drew Nippert - Analyst
- Mark Luna - Managing Director
- Michael Divin, MAI - Senior Managing Director

Information on Valbridge Property Advisors

Office Locations

Subject Photographs



View of Subject Property



View of Subject Property



Interior View of Single-Family Residence



Interior View of Storage Building



Horse Stalls with Pens



Back View of Single-Family Residence

Property Owner Notice



2731 81st Street
Lubbock, Texas 79423
713-467-5858 phone
713-467-0704 fax
Valbridge.com

July 16, 2019

Mr. and Mrs. Thomas Perry Jr.
2524 Bainbridge Drive
Odessa, TX 79762

Re: City of Midland
Thomas Perry Property
6400 West Highway 80
Midland, TX 79706

To Whom It May Concern:

Our firm has been engaged on behalf of the City of Midland to complete an appraisal on the above referenced parcel for the purpose of acquiring the remainder of your property.

We would like to visit the property during the week of July 22, 2019; therefore, please contact **Drew Nippert** in our office as soon as possible to arrange for a site visit.

Please review the attached request granting your permission for a site visit and identify any data that may be available for the appraisal process. At your earliest convenience, please sign the request and fax to 713-467-0704 or e-mail to the below contact.

We would appreciate this information being provided in a timely manner so that we have adequate time to give it consideration. Please do not hesitate to contact us with any questions. We greatly appreciate your cooperation in this matter.

Sincerely,

Valbridge Property Advisors



Mark Luna
Managing Director
Texas License #TX-1380067-G
mluna@valbridge.com
(713) 467-5858



2731 81st Street
Lubbock, Texas 79423
713-467-5858 phone
713-467-0704 fax
Valbridge.com

Property: 6400 West Highway 80

Permission Granted by:

Thomas Perry

Phone Number:

682-429-9908

We request your permission to allow a site visit on the above referenced property. Additionally, the following items would be helpful in the appraisal process. Please circle each of the items that you will be able to provide for this analysis.

1. Survey of the whole property.
2. Description of utility services to the tract (i.e. water, sanitary sewer, electrical, gas, phone, etc.).
3. Purchase contracts/closing statements from any transactions for the subject or tracts in the area over the past 5 years.
4. Any listings and/or contracts on the subject property.
5. Any information that you may want to provide in this matter.

Please sign and fax to 713-467-0704 or e-mail to the contact below. We look forward to working with you in this matter.

Sincerely,

Valbridge Property Advisors



Mark Luna
Managing Director
Texas License #TX-1335986-G
mluna@valbridge.com
(713) 467-5858

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Glossary

Definitions are taken from The Dictionary of Real Estate Appraisal, 6th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP), and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management; often a long-term lease to a credit tenant. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically through scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

In office buildings, the areas of the building that provide services to building tenants but which are not included in the office area or store area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas, food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building common area are floor common areas, parking space, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Certificate of Occupancy (COO)

A formal written acknowledgment by an appropriate unit of local government that a new construction or renovation project is at the stage where it meets applicable health and safety codes and is ready for commercial or residential occupancy. (Dictionary)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property. (Dictionary)

The amount of money charged to tenants for their shares of maintaining a [shopping] center's common area. The charge that a tenant pays for shared services and facilities such as electricity, security, and maintenance of parking lots. Items charged to common area maintenance may include cleaning services, parking lot sweeping and maintenance, snow removal, security and upkeep. (ICSC – International Council of Shopping Centers, 4th Ed.)

Condominium

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real estate restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature as well as some types of conservation-oriented development to continue, subject to the easement. (Dictionary)

Contributory Value

A type of value that reflects the amount a property or component of a property contributes to the value of another asset or to the property as a whole.

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service (DCR = NOI/Im), which measures the relative ability of a property to meet its debt service out of net operating income; also called *debt service coverage ratio (DSCR)*. A larger DCR typically indicates a greater ability for a property to withstand a reduction of income, providing an improved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

- 1) In appraisal, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.
- 2) In accounting, an allocation of the original cost of an asset, amortizing the cost over the asset's life; calculated using a variety of standard techniques. (Dictionary)

Disposition Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a specified time, which is shorter than the typical exposure time for such a property in that market.
- The property is subjected to market conditions prevailing as of the date of valuation;
- Both the buyer and seller are acting prudently and knowledgeably;
- The seller is under compulsion to sell;
- The buyer is typically motivated;
- Both parties are acting in what they consider to be their best interests;
- An adequate marketing effort will be made during the exposure time;
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

- 1) The date on which the appraisal or review opinion applies. (SVP)
- 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Gross Income (EGI)

The anticipated income from all operations of the real estate after an allowance is made for vacancy and collection losses and an addition is made for any other income. (Dictionary)

Effective Rent

Total base rent, or minimum rent stipulated in a lease, over the specified lease term minus rent concessions; the rent that is effectively paid by a tenant net of financial concessions provided by a landlord. (TIs). (Dictionary)

EPDM

Ethylene Propylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called *escalator clause*, *expense recovery clause* or *stop clause*. (Dictionary)

Estoppel Certificate

A signed statement by a party (such as a tenant or a mortgagee) certifying, for another's benefit, that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. (Black's) In real estate, a buyer of rental property typically requests estoppel certificates from existing tenants. Sometimes referred to as an *estoppel letter*. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (Dictionary)

Excess Rent

The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect unusual management, unknowledgeable or unusually motivated parties, a lease execution in an earlier, stronger rental market, or an agreement of the parties. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying operating expenses above a stated level or amount. (Dictionary)

Exposure Time

- 1) The time a property remains on the market.
- 2) The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

In an office building, the areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a *full service lease*. (Dictionary)

Going-Concern Value

An outdated label for the market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the *market value of the going concern* or *market value of the total assets of the business*. (Dictionary)

Gross Building Area (GBA)

- 1) Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of

the above-grade area. This includes mezzanines and basements if and when typically included in the market area of the type of property involved.

- 2) Gross leasable area plus all common areas.
- 3) For residential space, the total area of all floor levels measured from the exterior of the walls and including the superstructure and substructure basement; typically does not include garage space. (Dictionary)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50 percent or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expenses in income-producing properties when less than 100% occupancy is assumed. Expenses reimbursed based on the amount of occupied space, rather than on the total building area, are described as "grossed up." (Dictionary)

Gross Retail Sellout

The sum of the separate and distinct market value opinions for each of the units in a condominium, subdivision development, or portfolio of properties, as of the date of valuation. The aggregate of retail values does not represent the value of all the units as though sold together in a single transaction; it is simply the total of the individual market value conclusions. Also called the *aggregate of the retail values*, *aggregate retail selling price* or *sum of the retail values*. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning (HVAC) system. A unit that regulates the temperature and distribution of heat and fresh air throughout a building. (Dictionary)

Highest and Best Use

- 1) The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.
- 2) The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS)
- 3) [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions) (Dictionary)

Hypothetical Condition

- 1) A condition that is presumed to be true when it is known to be false. (SVP – Standards of Valuation Practice, effective January 1, 2015)
- 2) A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.) (Dictionary)

Industrial Gross Lease

A type of modified gross lease of an industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance and real property taxes, as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Typically this includes replacement cost less basement excavation, foundation, underground piping and architect's fees). (Dictionary)

Investment Value

The value of a property to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment

criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. (Dictionary)

Leased Fee Interest

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires. (Dictionary)

Leasehold Interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease. (Dictionary)

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a short time period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The ratio between a mortgage loan and the value of the property pledged as security, usually expressed as a percentage. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting the conditions and restrictions of a specified lease agreement, including the rental adjustment and revaluation, permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TIs). (Dictionary)

Market Value

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Dictionary)

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions"

address the determination of reasonable exposure and marketing time.) (Dictionary)

Master Lease

A lease in which the fee owner leases a part or the entire property to a single entity (the master lease) in return for a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense responsibility must always be specified. In some markets, a modified gross lease may be called a *double net lease*, *net net lease*, *partial net lease*, or *semi-gross lease*. (Dictionary)

Operating Expense Ratio

The ratio of total operating expenses to effective gross income (TOE/EGI); the complement of the net income ratio, i.e., $OER = 1 - NIR$ (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the *optionee*) to buy, sell, or lease real estate for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole, i.e., a fractional interest such as a tenancy in common, easement, or life interest. (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real property taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Potential Gross Income (PGI)

The total income attributable to property at full occupancy before vacancy and operating expenses are deducted. (Dictionary)

Prospective Future Value Upon Completion

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. ... The prospective market value –as completed- reflects the property's market value as of the time that development is expected to be complete. (Dictionary)

Prospective Future Value Upon Stabilization

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report ...The prospective market value – as stabilized – reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (Dictionary)

Replacement Cost

The estimated cost to construct, at current prices as of a specific date, a substitute for a building or other improvements, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of

the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the sandwich leaseholder when the property is subleased to another party; a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another, the sublessee, for a specific period of time, which may or may not be coterminous with the underlying lease term. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Surplus Land

Land that is not currently needed to support the existing use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

Triple Net (Net Net Net) Lease

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease, net net net lease, or fully net lease*. (Dictionary)

(The market definition of a triple net lease varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area, or building common area on a floor. The total of all the usable areas for a floor shall equal floor usable area of that same floor. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

Qualifications

Qualifications of Drew Nippert Analyst

Valbridge Property Advisors

Independent Valuations for a Variable World

State Certifications

State of Texas

Membership/Affiliations:

Appraisal Institute – Member ID: 578767

Texas Appraiser Licensing and Certification Board – TX 1340796

Texas Real Estate Commission – TX 627962 (Inactive)

Appraisal Institute & Related Courses:

National USPAP Course – Champion School of Real Estate

Basic Appraisal Principles – Appraisal Institute

Basic Appraisal Procedures – Appraisal Institute

Law of Contracts – Champion School of Real Estate

Law of Agency – Champion School of Real Estate

Real Estate Principles I – Champion School of Real Estate

Real Estate Principles II – Champion School of Real Estate

Commercial Real Estate – Champion School of Real Estate

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Experience:

Managing Director

ValbridgePropertyAdvisors

(February 2014-Present)

Real Estate Agent

Coldwell Banker, Rick Canup Realtors

(May 2013- February 2014)

Appraisal assignments have included valuation of going concern, fee simple, and leased fee, including vacant land, residential, industrial facilities, office buildings, retail, and a variety of special-use owner occupied facilities. Assignments have included properties located throughout Texas.

In connection with the assignments listed above, clients include institutions, insurance and title companies, corporations, law firms, developers, investors, tenants, and various government entities.

You may wish to laminate the pocket identification card to preserve it.

DERRILL DREW NIPPERT
2020 87TH STREET
LUBBOCK, TX 79423

The person named on the reverse is authorized to conduct appraisals under direct supervision of the sponsoring appraiser(s) by the Texas Appraiser Licensing and Certification Board.

Inquiry as to the status of this license may be made to:

Texas Appraiser Licensing and Certification Board
P.O. Box 12188
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www.talcb.texas.gov
(512) 936-3001
Fax: (512) 936-3899

Texas Appraiser Licensing and Certification Board
P.O. Box 12188 Austin, Texas 78711-2188

Appraiser Trainee

Authorization#: **TX 1340796** Trainee I. D. Number: **999968389**
Issued: **09/27/2018** Expires: **09/30/2020**

Trainee: **DERRILL DREW NIPPERT**
Supervisor: **TONY MARK LUNA JR** Certification #: **TX 1380067 C**
I. D. Number: **881348131**

The Texas Appraiser Licensing and Certification Board authorizes the named person to act as an Appraiser Trainee under the supervision of the certified appraiser noted above, pursuant to Texas Occ. Code, Chapter 1103.

An Appraiser Trainee may perform appraisals only under the direct supervision of the Trainee's supervisory appraiser(s) who signs the report and is responsible for the conduct of the Appraiser Trainee.

An Appraiser Trainee may be supervised by one or more certified appraisers.


Douglas E. Oldmixon
Commissioner

Texas Appraiser Licensing and Certification Board

P.O. Box 12188 Austin, Texas 78711-2188

Appraiser Trainee

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An Appraiser Trainee may be supervised by one or more certified appraisers.


Douglas E. Oldmixon
Commissioner

Qualifications of Mark Luna

Managing Director

Valbridge Property Advisors

Independent Valuations for a Variable World

State Certifications

State of Texas

State of New Mexico

EducationTexas Tech University

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Associate Member:

Appraisal Institute

Appraisal Institute & Related Courses:

Real Estate Courses – Completed 300+ hours of specific AQB core curriculum courses required for the State of Texas General Appraiser Certification

Experience:**Managing Director**

Valbridge Property Advisors

(2012-Present)

Staff Appraiser

Blosser Appraisal, a Division of The Gerald A. Teel Company, Inc.

(2008-2012)

Senior Accountant

Tropical Shipping, Riviera Beach, Florida

(2005-2007)

Appraisal assignments have included valuation of going concern, fee simple, leased fee, leasehold and sandwich leasehold interests in various property types, including vacant land, residential and commercial subdivisions, apartment projects, industrial facilities, office buildings, retail centers, hotels, car washes, ammunition storage, timberland, parking garages, surgery centers, and a variety of special-use owner occupied facilities. Assignments have included properties located throughout Texas, as well as the states of Louisiana, New Mexico, Arkansas, and Ohio.

In connection with the assignments listed above, clients include institutions, insurance and title companies, corporations, law firms, developers, investors, tenants, and various government entities.



Certified General Real Estate Appraiser

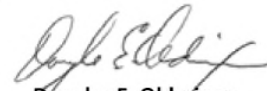
Appraiser: **Tony Mark Luna JR**

License #: **TX 1380067 G**

License Expires: **07/31/2021**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title:
Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.


Douglas E. Oldmixon
Commissioner

Qualifications of Michael G. Divin, MAI

Senior Managing Director

Valbridge Property Advisors

Independent Valuations for a Variable World

State Certifications

State of Texas

Education

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Course 1A2 – Basic Valuation Procedures

Course 400 – General Market Analysis & Highest and Best Use

Course 420 – Business Practices & Ethics

Course 1BA/B – Capitalization Theory & Techniques Parts A & B

Course 530 – Advanced Sales Comparison & Cost Approaches

Course 540 – Report Writing and Valuation Analysis

Course 550 – Advanced Applications

Course 700 – The Appraiser as an Expert Witness: Preparation and Testimony

Course 733 – Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets

USPAP Uniform Standards of Professional Appraisal Practice

Experience:**Senior Managing Director**

ValbridgePropertyAdvisors(2013-Present)

Partner

The Gerald A. Teel Company, Inc. (8/1997- 3/2013)

Managing Director

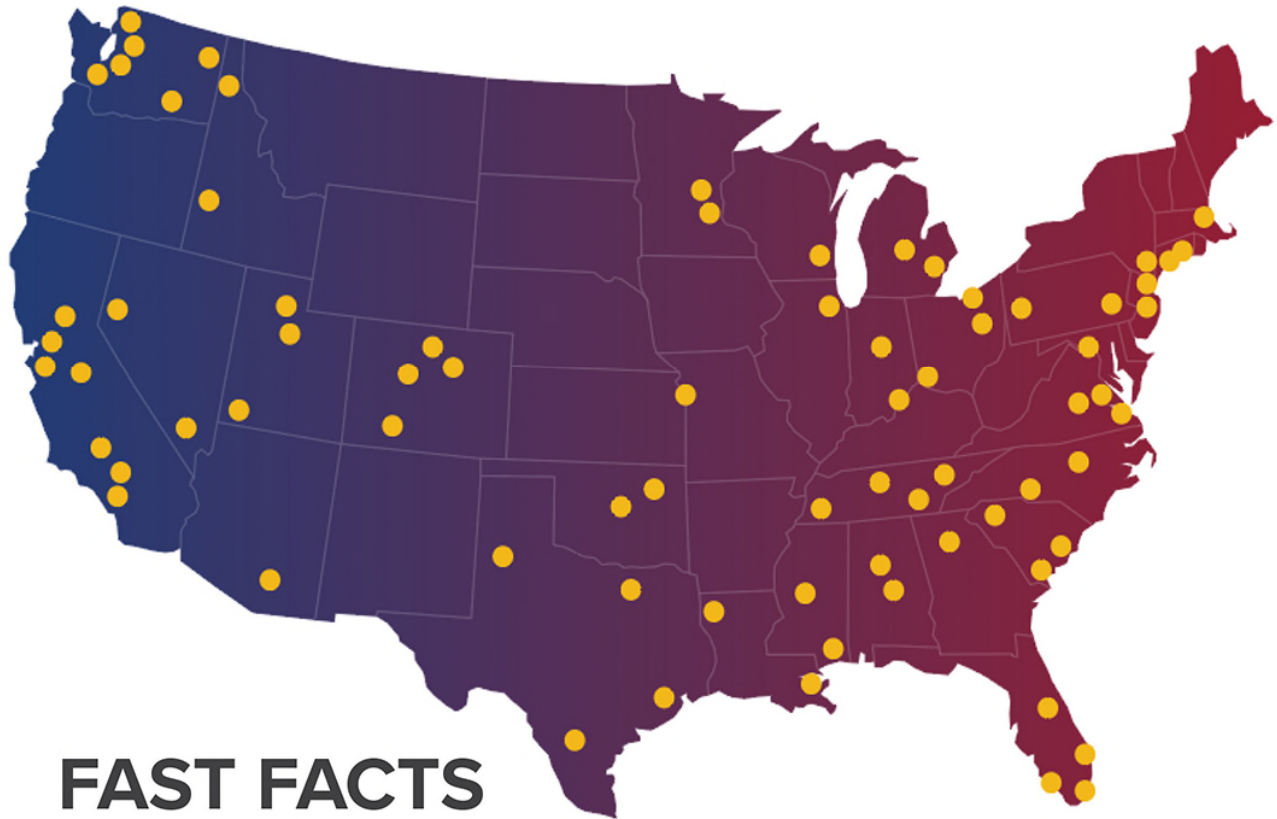
Blosser Appraisal, A Division of The Gerald A. Teel Company, Inc. - Lubbock, Texas (2/2008-3/2013)

Appraisal/valuation and consulting assignments include: apartment buildings; retail buildings and shopping centers; general and medical office buildings; industrial buildings; religious and special purpose properties including schools, churches; hotels and motels; residential subdivisions; and vacant industrial, commercial, and residential land. Assignments have been concentrated in southwest region of the US, including Texas and New Mexico but national appraisal experience in 35 U.S. states.





Valbridge
PROPERTY ADVISORS



FAST FACTS

COMPANY INFORMATION

- Valbridge is the largest independent national real estate valuation and advisory services firm in North America.
 - Total number of MAI-designated appraisers (200+ on staff)
 - Total number of office locations (70+ across U.S.)
 - Total number of staff (675+ strong)
- Valbridge covers the entire U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties and residential.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.

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October 6, 2020





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Suite 304
Pittsburgh, PA 15227
412.881.6080

SOUTH CAROLINA

11 Cleveland Court
Greenville, SC 29607
864.233.6277

920 Bay Street
Suite 26
Beaufort, SC 29902
843.342.2302

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843.881.1266

TENNESSEE

5205 Maryland Way
Suite 300
Brentwood, TN 37027
615.369.0670

701 Broad Street
Suite 209
Chattanooga, TN 37402
423.285.8435

213 Fox Road
Knoxville, TN 37922
865.522.2424

756 Ridge Lake Blvd
Suite 225
Memphis, TN 38120
901.753.6977

TEXAS

High Point Center
12225 Greenville Avenue
Suite 490
Dallas, TX 75243
214.446.1611

TEXAS (cont'd)

974 Campbell Road
Suite 204
Houston, TX 77024
713.467.5858

2731 81st Street
Lubbock, TX 79423
806.744.1188

9901 IH-10 West
Suite 1035
San Antonio, TX 78230
210.227.6229

UTAH

260 South 2500 West
Suite 301
Pleasant Grove, UT 84062
801.492.9328

1100 East 6600 South
Suite 201
Salt Lake City, UT 84121
801.262.3388

20 North Main
Suite 304
St. George, UT 84770
435.773.6300

VIRGINIA

656 Independence Parkway
Suite 220
Chesapeake, VA 23320
757.410.1222

4914 Fitzhugh Avenue
Suite 102
Richmond, VA 23230
757.345.0010

5107 Center Street
Unit 2B
Williamsburg, VA 23188
757.345.0010

WASHINGTON

18728 Bothell Way, NE
Suite B
Bothell, WA 98011
425.450.0040

2927 Colby Avenue
Suite 100
Everett, WA 98201
425.258.2611

419 Berkeley Avenue
Suite A
Fircrest, WA 98466
253.274.0099

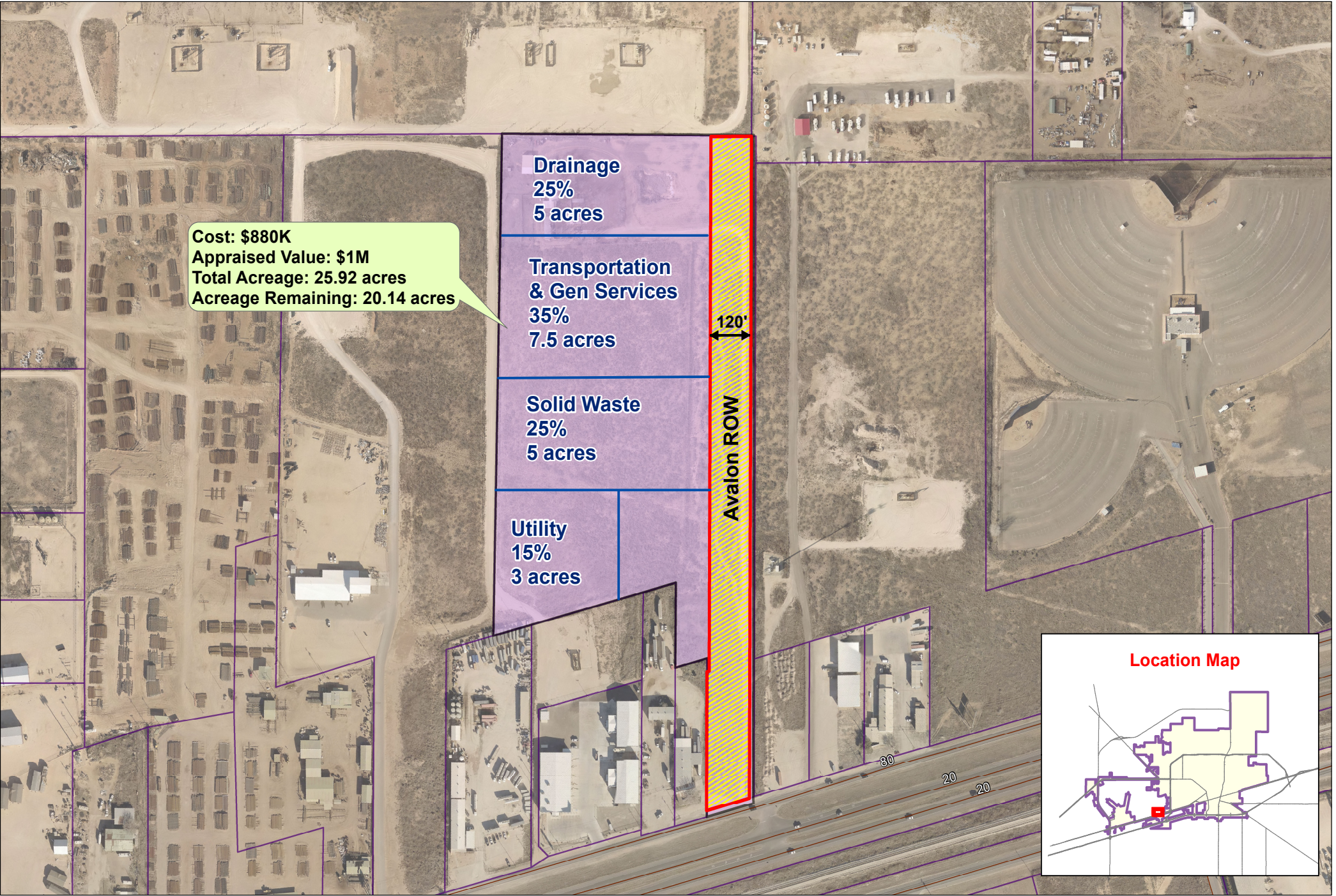
8378 W. Grandridge Boulevard
Suite 110-D
Kennewick, WA 99336
509.221.1540

506 Second Avenue
Suite 1001
Seattle, WA 98104
206.209.3016

324 N. Mullan Road
Spokane Valley, WA 99206
509.747.0999

WISCONSIN

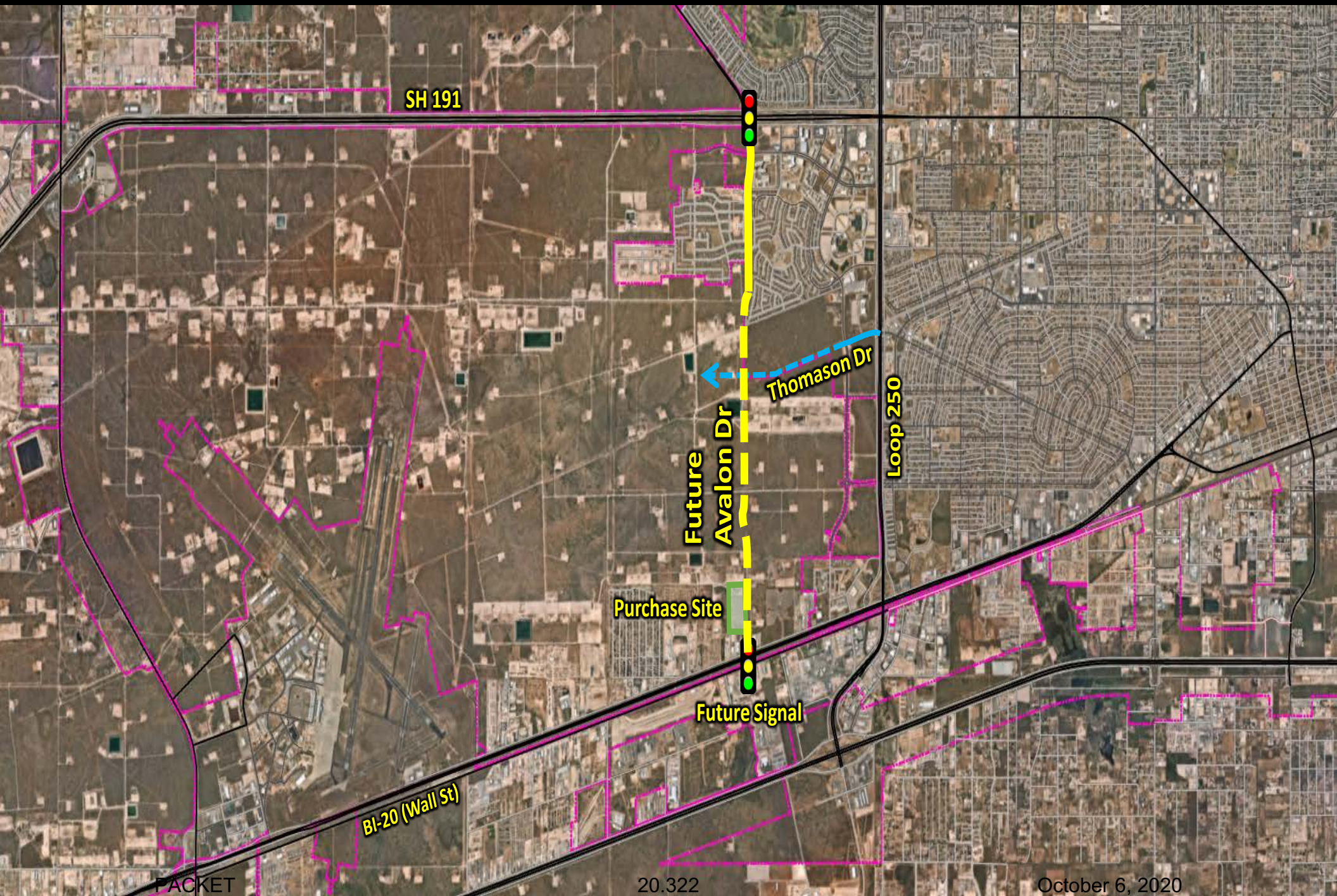
12660 W. North Avenue
Brookfield, WI 53005
262.782.7990

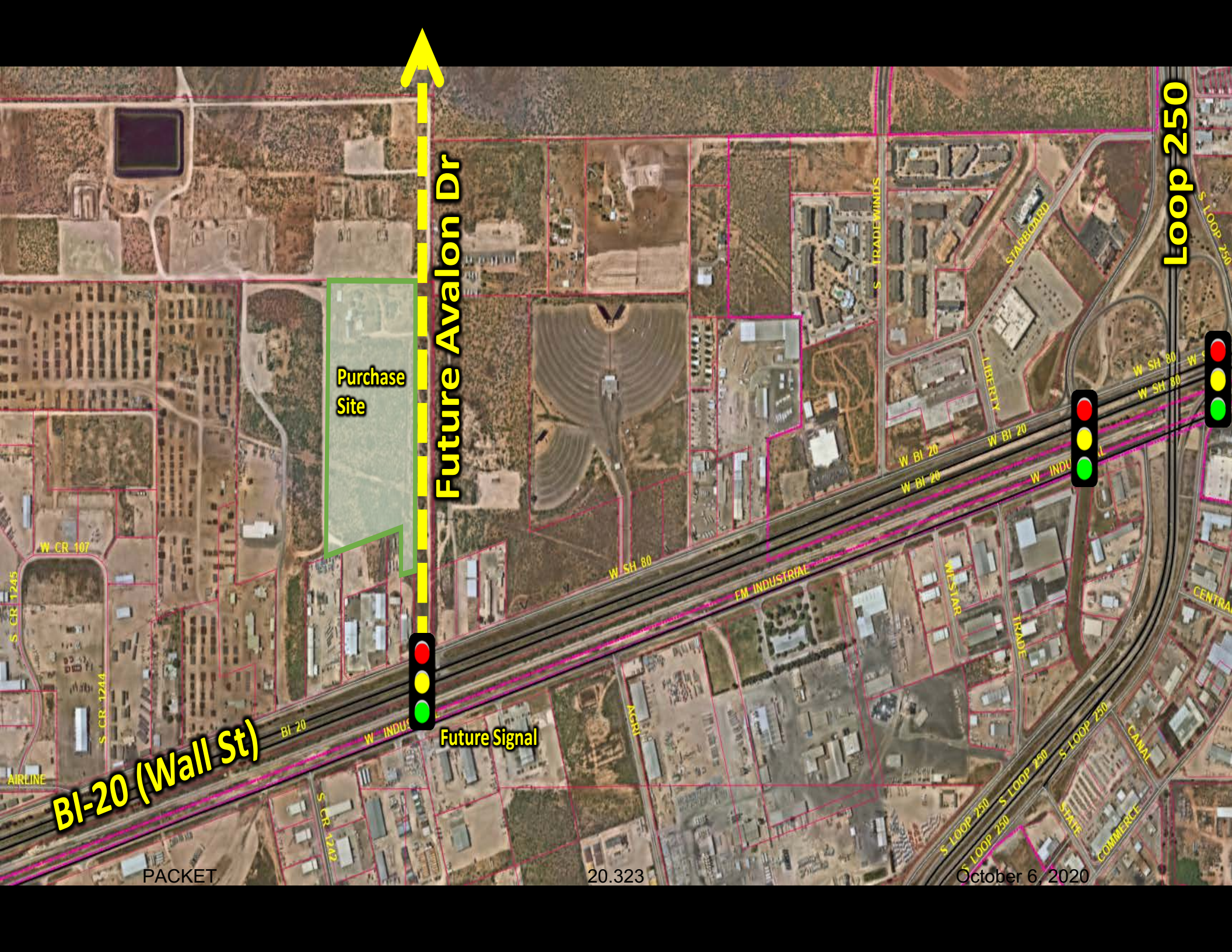


- Legend**
- Street
 - Existing ROW
 - Parcel Selection



Perry Property Proposed Tracts







City Council Meeting

Item Number: 21
Meeting Date: October 6, 2020
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Beta Crude Connector, LLC. regarding city-owned property described as Section 8, Block 38, Township 1 South, T&P RR Co. Survey, Midland & Martin Counties, Texas. (UTILITIES)

Purpose:

This motion will provide a Twenty foot (20) wide right of way on City Executive Airpark property for a 16" common carrier crude oil pipeline. Proposed pipeline is along the western section line.

This Right-of-Way License is proposed for a ten (10) year period with automatic ten (10) year renewal upon written request. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

The following fees will be collected:

Application fee (one time): \$1,000

Annual Lease Rate (135.5 rods x \$20/rod): \$2,710.00

Surface Damages: (135.5 rods x \$10/rod): \$1,355.00

Total Collected: \$4,065.00

Discussion:

This common carrier, steel construction crude oil line will be sixteen inches (16) in diameter and buried forty-two inches (42) deep. The requested temporary Construction ROW will be forty feet (40) and will terminate after construction.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: October 6, 2020

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
 Midland, Texas 79702

Licensee: Beta Crude Connector, LLC

Licensee's Representative: **Greg Lamberson**

Licensee's Mailing Address: 4200 East Skelly Drive, Tulsa, Oklahoma 74135

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of ten (10) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for additional terms of ten (10) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to renewal payments being made timely by Licensee..

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensors delivers notice to Licensee reasonably detailing the breach or default.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensors upon inspection by Licensors Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of TWO THOUSAND SEVEN HUNDRED TEN and 00/100 Dollars (\$2,710.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensors a late charge of five percent (5%).

B. Surface Damage Fee. Licensee shall pay a one-time surface damage fee to Licensors in the amount of ONE THOUSAND THREE HUNDRED FIFTY-FIVE and 00/100 Dollars (\$1,355.00), payable on or prior to the Commencement Date.

C. Annual Fee. Licensee shall pay to Licensors an annual fee in the amount of TWO THOUSAND SEVEN HUNDRED TEN and 00/100 Dollars (\$2,710.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensors Representative. Said fee shall revert to Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensors and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensors in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Current Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being forty (40) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel construction pipeline, not to exceed sixteen (16) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to twenty (20) feet after the pipeline is laid. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-two (42) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct

streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor,

securely locked except during operations related to this License. At any gate that is to be locked, Licensors may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensors' express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensors and shall be constructed as reasonably required by Licensors. Upon the termination of this License, at Licensors' election, gates in fences shall be left in place and shall thereafter be owned by Licensors or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensors shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensors shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensors reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensors and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensors in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensors, at Licensors' sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensors pursuant to directions from Licensors' City Council without any claim for reimbursement for the cost of the relocation or damages against Licensors. Should Licensors request relocation of Licensee's pipeline, property, or casing, Licensors shall grant to Licensee a viable alternate right-of-way. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensors, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit--
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$10,000,000.00 each occurrence
\$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and

name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIAL MEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS

LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this

License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR,

LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Robert Patrick, Assistant City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**LICENSEE:
BETA CRUDE CONNECTOR, LLC**

By: [Signature]

Printed Name: Greg Lamberson

Title: V.P. of Planning

THE STATE OF OK

§

§

COUNTY OF Tulsa

§

BEFORE ME, the undersigned authority, on this 10th day of September, 2020 personally appeared Greg Lamberson an officer of Beta Crude Connector, LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 10th day of September, 2020.

[Signature]
Notary Public, State of Oklahoma

Reference No. 20-329-025

PACKET

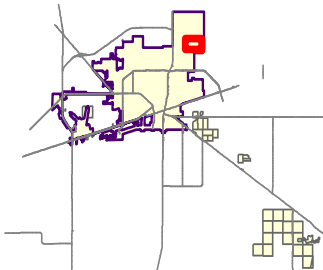
21.337



12 | Page

October 6, 2020

LOCATION MAP



PARTRIDGE ST

HUSK ST

BLK 38-1-S
SEC 7

BISON ST

OUTLAW CT

STAKE AV

RIO PL

CARRIAGE RD

PIPELINE TOTAL LENGTH:
135.5 RODS (2235.81 FEET)

BLK 38-1-S
SEC 8

JADAN KATE RD

ARAPAHOE RD

BLK 38-1-S
SEC 18

BLK 38-1-S
SEC 17

Date: 8/12/2020

Legend

- Proposed Pipeline
- Street
- City Owned Parcels
- Survey Section



Proposed Pipeline ROW Beta Crude Connector, LLC

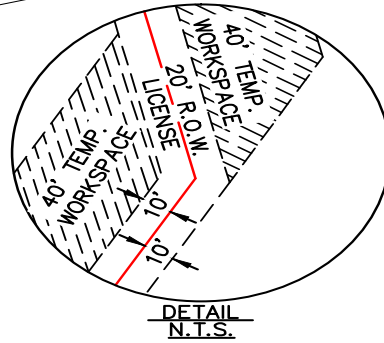
October 6, 2020

0 250 500 Feet

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTE FOR A
SURVEY PRODUCT NOR IS IT DESIGNED TO
BE USED AS A PRIMARY TOOL IN PERMITTING
OR OTHER DECISIONS BASED SOLELY ON THE
INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.

"EXHIBIT-A"

D B FITE PROPERTIES, INC.,
PORTION OF SECTION 7, BLOCK 38, T-1-S,
T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS
REMAINDER PORTION OF THE 640 ACRES
INSTRUMENT NO. 2086
O.P.R.M.C.T.



A-637
T&P R.R. CO.
SURVEY

S14°32'14"E
77.80'(TIE)

FOUND 1/2"
IRON ROD W/
GREEN CAP
MARKED "ASB 5689"
(C.M.)
North: 10726937.06
East: 1762525.52

P.O.T.
Lat: N32°05'13.6335"
Long: W102°03'27.6096"
Lat: N32.08712043
Long: W102.05766934
North: 10727012.37
East: 1762505.99

CITY OF MIDLAND
PORTION OF SECTION 8, BLOCK 38 T-1-S
TRACT TXMD-12.1-ML & TRACT TXMD-12.2-ML
VOL 816 PAGE 349
D.R.M.C.T.

PIONEER NATURAL RESOURCES USA, INC.
PORTION OF SECTION 17,
BLOCK 38 T-1-S
TRACT TXMD-12.3-ML
INSTRUMENT NO. 2018-14217
D.R.M.C.T.

FOUND 5/8"
RAILROAD SPIKE

LINE TABLE		
LINE#	BEARING	DISTANCE
L1	N30°28'03"E	98.76'
L2	N14°31'57"W	2064.43'
L3	N89°06'50"W	72.62'

FOUND 1/2"
IRON ROD W/
GREEN CAP
MARKED "ASB 5689"
P.O.B.
Lat: N32°04'53.0920"
Long: W102°03'20.9525"
Lat: N32.08141443
Long: W102.05582013
North: 10724927.75
East: 1763046.56

A-150
T&P R.R. CO.
SURVEY

N14°32'14"W
89.25'(TIE)

MARTIN COUNTY
MIDLAND COUNTY

A-1213
T&P R.R. CO.
SURVEY

P.O.C.
FOUND 3/4"
IRON ROD (C.M.)
North: 10724841.36
East: 1763068.96

FOUND IRON ROD W/
YELLOW CAP STAMPED
"1974"

CENTERLINE DESCRIPTION OF A PROPOSED PIPELINE RIGHT OF WAY LICENSE

BEING A 20' WIDE PROPOSED PIPELINE RIGHT OF WAY LICENSE, HAVING SIDELINES THAT ARE 10' EACH SIDE OF THE DESCRIBED CENTERLINE ARE TO BE PROLONGED OR SHORTENED TO CONFORM TO GRANTORS PROPERTY LINES AND BEING SITUATED IN THE T&P RR CO. SURVEY, ABSTRACT NO. 637, AND ABSTRACT NO. 1213 SECTION 8, BLOCK 38, T-1-S, MIDLAND COUNTY AND MARTIN COUNTY, TEXAS, AND BEING A PORTION OF A TRACT OF LAND AS DESCRIBED IN DEED TO CITY OF MIDLAND, IN VOLUME 816 PAGE 349, DEED RECORDS, MIDLAND COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF COMMENCEMENT: AT A FOUND 3/4" IRON ROD AT THE SOUTHWEST CORNER OF SAID SECTION 8, THENCE NORTH 14°32'14" WEST ALONG THE WEST LINE OF SAID PROPERTY, 89.25 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 30°28'03" EAST, 98.76 FEET; THENCE NORTH 14°31'57" WEST, 2,064.43 FEET; THENCE NORTH 89°06'50" WEST, 72.62 FEET TO THE **POINT OF TERMINATION**, FROM WHICH A FOUND 1/2" IRON ROD WITH GREEN CAP STAMPED "ASB 5689" BEARS SOUTH 14°32'14" EAST ALONG THE WEST LINE OF SAID PROPERTY, 77.80 FEET.

SAID RIGHT OF WAY LICENSE CENTERLINE HAVING A TOTAL LENGTH OF 2,235.81 FEET (135.50 RODS) AND THE RIGHT OF WAY LICENSE CONTAINING 1.03 ACRES (44,716 SQUARE FEET) OF LAND MORE OR LESS.

BASIS OF BEARING: BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE, CENTRAL ZONE, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.

LEGEND:

- A- = ABSTRACT
- C.M. = CONTROL MONUMENT
- TEMP. = TEMPORARY
- PERM. = PERMANENT
- P.O.B. = POINT OF BEGINNING
- P.O.T. = POINT OF TERMINATION
- P.O.C. = POINT OF COMMENCEMENT
- = DENOTES PROPERTY BOUNDARY
- = DENOTES C/L RIGHT OF WAY LICENSE
- = DENOTES FOUND MONUMENT

NOTES:

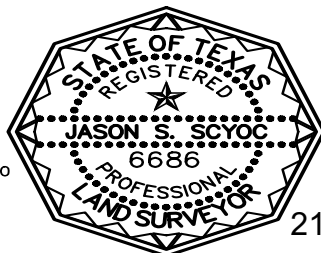
- RESEARCH HAS BEEN PROVIDED BY OTHERS.
- THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS FOR A RIGHT OF WAY LICENSE.
- RIGHT OF WAY LICENSES, SETBACKS, AND OTHER ENCUMBRANCES ARE NOT SHOWN BY AGREEMENT WITH CLIENT.
- (CM) = CONTROLLING MONUMENT
- D.R.M.C.T. FOR "DEED RECORDS, MIDLAND COUNTY, TEXAS"

SURVEYOR'S CERTIFICATE

I, JASON S SCYOC, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6686, STATE OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED EXHIBIT WAS PREPARED FROM AN ACTUAL ON THE GROUND SURVEY UNDER MY DIRECT SUPERVISION AND WAS PREPARED FROM PUBLIC RECORDS WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE.

DATE OF SIGNATURE: 08-11-2020
JASON S. SCYOC R.P.L.S. NO. 6686

DOWNTOWN DESIGN SERVICES, INC.
1127 AURARIA PARKWAY, STE. 203
DENVER, CO 80204
TEL: 303-248-7722 FAX: 918-221-3940
TEXAS FIRM NO. 10194459
www.ddsglobal.com



BCC
BETA CRUDE CONNECTOR, LLC

CITY OF MIDLAND
PORTION OF SECTION 8, BLOCK 38 T-1-S
T & P RR CO SURVEY A-1213 & A-637
MARTIN AND MIDLAND COUNTY, TEXAS

SURVEY DATE: JULY 31, 2020 SHEET 1 OF 1 SHEETS
DRAWN: AUG. 11, 2020 DRAWN BY: DMB
TRACT: TXMD-12.1-ML & TXMD-12.2-ML LINE NAME: MIDLAND MAINLINE

0 500 1000
SCALE 1" = 1000'



PACKET

21.359

October 6, 2020



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/10/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 1300 S. Main Tulsa OK 74119	CONTACT NAME: Denise Bergschneider PHONE (A/C, No, Ext): 918-884-2900 E-MAIL ADDRESS: Denise_Bergschneider@ajg.com FAX (A/C, No): 918-884-2999
INSURED Beta Crude Connector, LLC 4200 E. Skelly Dr., Ste 400 Tulsa OK 74135	INSURER(S) AFFORDING COVERAGE INSURER A: Scottsdale Insurance Company INSURER B: Mid-Continent Casualty Company INSURER C: National American Insurance Company (OK) INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1742975502**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	ENS0005527	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	04-CA-002839459	6/14/2020	6/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	XNS0005674	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	Y N/A	OW23880535	1/1/2020	1/1/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability Policy includes Additional Insured Endorsement CG2010 10 01, Additional Insured Endorsement (completed operations) CG2037 10 01, Waiver of Subrogation Endorsement CG4 04 05 09, in favor of Certificate Holder as required by written contract. Excess Policy is follow form per CX00 01 04 13. Automobile Policy includes Additional Insured Endorsement MA2004 and Waiver of Subrogation Endorsement MA2003 in favor of Certificate Holder as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

City of Midland 300 N. Loraine Midland TX 79701 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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PACKET

21.340

October 6, 2020

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City Council Meeting

Item Number: 22
Meeting Date: October 6, 2020
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Beta Crude Connector, LLC. regarding city-owned property described as Sections 7 and 18, Block 38, Township 1 South, T&P RR Co. Midland County, Texas. (UTILITIES)

Purpose:

This motion will provide a right of way to bore 64.5' under City of Midland owned Arapahoe Road / County Road 40 for a 16" common carrier crude oil pipeline. Proposed pipeline road crossing is between private property owners.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000

Annual Lease Rate (3.89 rods x \$20/rod): \$77.00 / \$400.00 minimum

Surface Damages: none / bore

Total Collected: \$1,400.00

Discussion:

This common carrier, steel construction crude oil line will be sixteen inches (16") in diameter placed within a steel casing from both edges of road Right of Way and buried at least 8' below the road.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement

A handwritten signature in black ink, appearing to read "Robert Palmer". The signature is fluid and cursive, with the first name "Robert" and last name "Palmer" clearly distinguishable.

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: October 7, 2020

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
 Midland, Texas 79702

Licensee: Beta Crude Connector, LLC

Licensee's Representative: **Greg Lamberson**

Licensee's Mailing Address: 4200 East Skelly Drive, Tulsa, Oklahoma 74135

Property: See Exhibit A attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of ten (10) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for additional terms of ten (10) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to renewal payments being made timely by Licensee..

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensors delivers notice to Licensee reasonably detailing the breach or default.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensors upon inspection by Licensors Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and 00/100 Dollars (\$400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensors a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensors an annual fee in the amount of FOUR HUNDRED and 00/100 Dollars (\$400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensors Representative. Said fee shall revert to Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensors and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensors in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Current Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensors at the office of Licensors Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensors does hereby grant unto Licensee, the right to enter upon the Property,

as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel construction pipeline, not to exceed eight (8) inches in diameter, placed within a steel casing, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-two (42) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY**

DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original

condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. Should Licensor request relocation of Licensee's pipeline, property, or casing, Licensor shall grant to Licensee a viable alternate right-of-way. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

■ Personal Injury: \$1,000,000.00 per person

■ Property Damage:	\$1,000,000.00 per occurrence \$100,000.00 per occurrence
<i>Business Automobile Liability:</i>	\$1,000,000.00 combined single limit-- Personal Injury and Property Damage
<i>Workers' Compensation:</i>	Statutory limits
<i>Employers' Liability:</i>	\$1,000,000.00 per accident or occurrence
<i>Umbrella Liability:</i>	\$10,000,000.00 each occurrence \$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,

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ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR,

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AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND

INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of

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governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the

parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By:

City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
BETA CRUDE CONNECTOR, LLC

By: [Signature]
Printed Name: Greg Lamberson
Title: V.P. of Planning

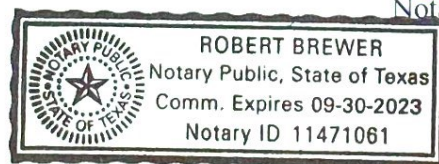
THE STATE OF Texas
COUNTY OF Midland

§
§
§

BEFORE ME, the undersigned authority, on this 21st day of September, 2020 personally appeared Greg Lamberson an officer of Beta Crude Connector, LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 21st day of September, 2020.

[Signature]
Notary Public, State of Texas



Reference No. 20-329-026

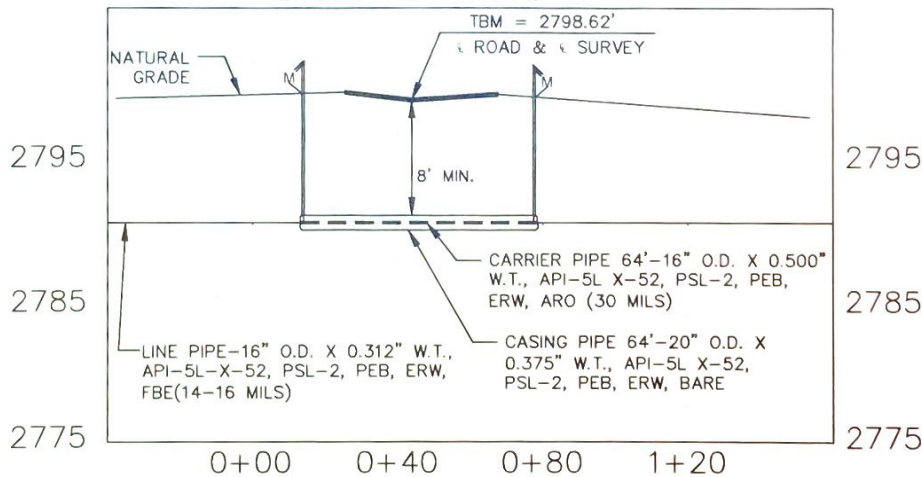
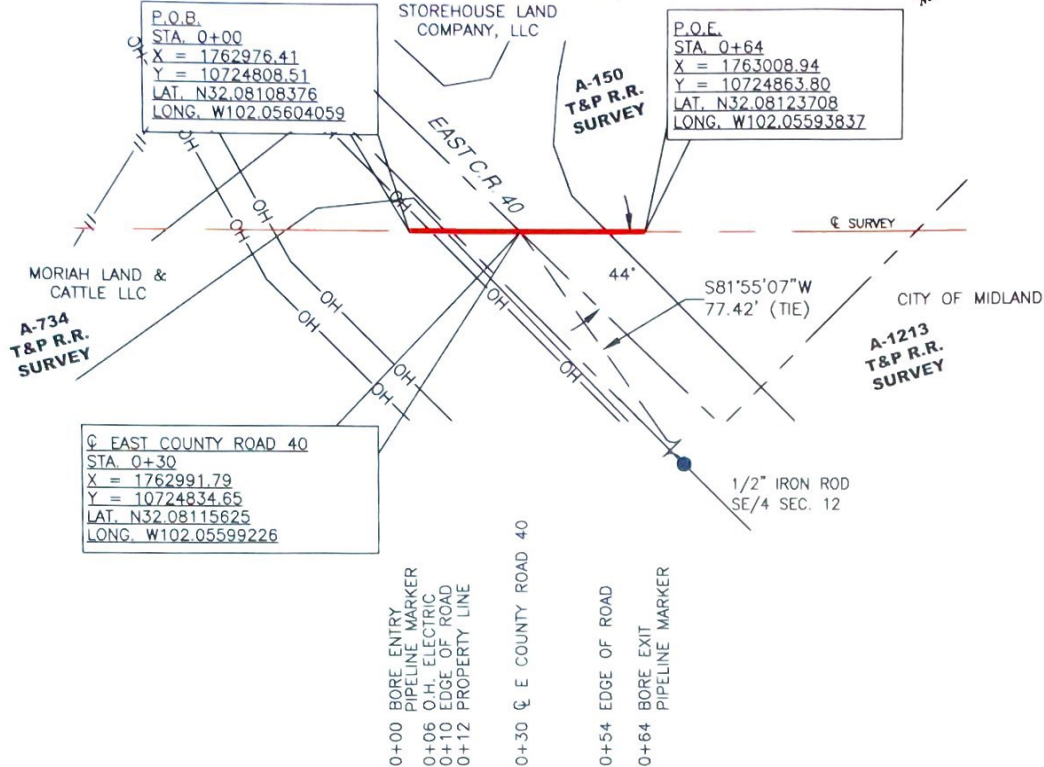
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PACKET

22.354

October 6, 2020

EXHIBIT "A"
PLAN AND PROFILE OF A
CRUDE PIPELINE
UNDERCROSSING EAST COUNTY ROAD 40
MIDLAND COUNTY, TEXAS



NOTES:

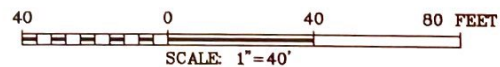
1. ORIGINAL DOCUMENT SIZE: 8.5"x14"
2. POB: POINT OF BEGINNING
3. POE: POINT OF EXIT
4. MUST BE CASED.

5. BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE TEXAS CENTRAL, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.
6. PIPELINE MARKER TO BE INSTALLED AT EDGE OF ROW.

Barlow's (Hoop Stress) Calculations	
Material Yield Strength, SMYS (PSI)	52000
Wall Thickness, t_w (in)	0.500
Outside Diameter, D (in)	16
Design Factor, F	0.72
Long Joint Factor, E	1
Temperature Factor, T	1
Maximum Operating Pressure, MOP (PSI)	1440
Maximum Allowable Internal Pressure, P (PSI)	3250
Hoop Stress (PSI)	23040
% SMYS	44%
Barlow's Formula	
$P = 2(SMYS)(t_w)/D$	



Chad Bell
 9/13/20



NO.	REVISION DESCRIPTION	DATE	BY
3	REVISE FOR REROUTE	08/17/20	TJA
4	ADD CASED PIPE	09/03/20	TJA



BCC
 BETA CRUDE CONNECTOR, LLC

PROPOSED PIPELINE CROSSING EAST COUNTY ROAD 40
 LOCATED IN SECTION 7 BLOCK 38 TOWNSHIP 1 SOUTH,
 T&P R.R. SURVEY A-734 & A-150
 MIDLAND COUNTY, TEXAS

SURVEY DATE: FEB. 26, 2020	MIDLAND MAINLINE
DRAFTING DATE: JULY 31, 2020	PAGE 1 OF 1
APPROVED BY: RLM	DRAWN BY: RLM

The Pareto Group
 TPG
 A Consulting Company
 TEXAS COA #21175

PACKET

22.355

October 6, 2020



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/10/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 1300 S. Main Tulsa OK 74119		CONTACT NAME: Denise Bergschneider PHONE (A/C, No, Ext): 918-884-2900 E-MAIL ADDRESS: Denise_Bergschneider@ajg.com FAX (A/C, No): 918-884-2999	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Scottsdale Insurance Company	41297
		INSURER B: Mid-Continent Casualty Company	23418
		INSURER C: National American Insurance Company (OK)	23663
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1742975502

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	ENS0005527	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	04-CA-002839459	6/14/2020	6/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	XNS0005674	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	Y	OW23880535	1/1/2020	1/1/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability Policy includes Additional Insured Endorsement CG2010 10 01, Additional Insured Endorsement (completed operations) CG2037 10 01, Waiver of Subrogation Endorsement CG4 04 05 09, in favor of Certificate Holder as required by written contract. Excess Policy is follow form per CX00 01 04 13. Automobile Policy includes Additional Insured Endorsement MA2004 and Waiver of Subrogation Endorsement MA2003 in favor of Certificate Holder as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

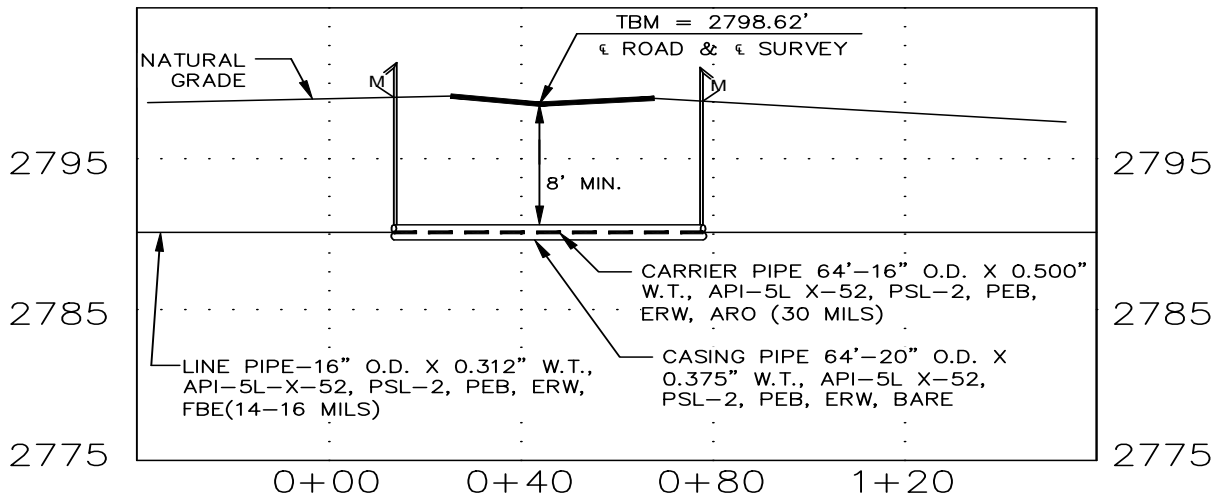
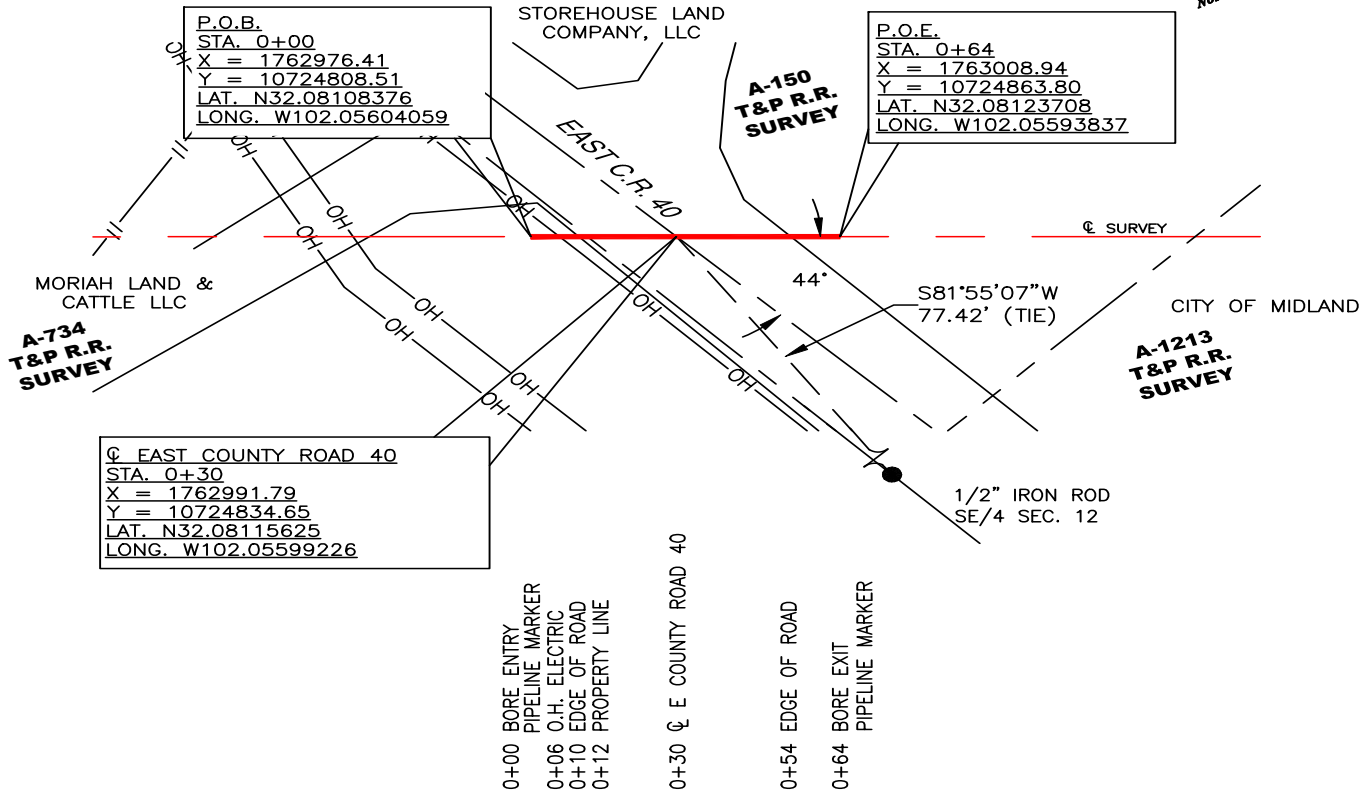
City of Midland 300 N. Loraine Midland TX 79701 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

PACKET

22-356

October 6, 2020
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EXHIBIT "A" PLAN AND PROFILE OF A CRUDE PIPELINE UNDERCROSSING EAST COUNTY ROAD 40 MIDLAND COUNTY, TEXAS



NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5"x14"
2. POB: POINT OF BEGINNING
3. POE: POINT OF EXIT
4. MUST BE CASSED.

5. BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE TEXAS CENTRAL, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.
6. PIPELINE MARKER TO BE INSTALLED AT EDGE OF ROW.

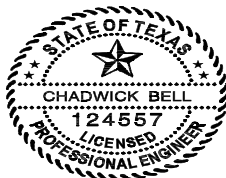
Barlow's (Hoop Stress) Calculations

Material Yield Strength, SMYS (PSI)	52000
Wall Thickness, t_w (in)	0.500
Outside Diameter, D (in)	16
Design Factor, F	0.72
Long Joint Factor, E	1
Temperature Factor, T	1
Maximum Operating Pressure, MOP (PSI)	1440

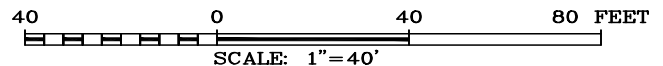
Maximum Allowable Internal Pressure, P (PSI)	3250
Hoop Stress (PSI)	23040
% SMYS	44%

Barlow's Formula

$$P = 2(SMYS)(t_w)/D$$



Chad Bell
9/3/20
22.357

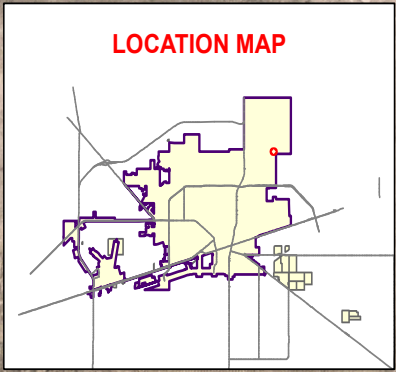


NO.	REVISION DESCRIPTION	DATE	BY
3	REVISE FOR REROUTE	08/17/20	TJA
4	ADD CASSED PIPE	09/03/20	TJA



PROPOSED PIPELINE CROSSING EAST COUNTY ROAD 40
LOCATED IN SECTION 7 BLOCK 38 TOWNSHIP 1 SOUTH,
T&P R.R. SURVEY A-734 & A-150
MIDLAND COUNTY, TEXAS

SURVEY DATE: FEB. 26, 2020	MIDLAND MAINLINE
DRAFTING DATE: JULY 31, 2020	PAGE 1 OF 1
APPROVED BY: RLM	FILE: TXMD-12.CR-ML



BLK 38-1-S
SEC 7

BLK 38-1-S
SEC 8

PIPELINE TOTAL LENGTH:
3.89 RODS (64.15 FEET)

ARAPAHOE RD

BLK 38-1-S
SEC 18

BLK 38-1-S
SEC 17

Date: 8/24/2020

Legend

- Proposed Pipeline
- Street
- Survey Section



Proposed Pipeline ROW Beta Crude Connector, LLC

October 6, 2020

0 15 30 Feet

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A
SURVEY PRODUCT NOR IS IT DESIGNED TO
BE USED AS A PRIMARY TOOL IN PERMITTING
OR OTHER DECISIONS BASED SOLELY ON THE
INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.



City Council Meeting

Item Number: 23
Meeting Date: October 6, 2020
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Beta Crude Connector, LLC. regarding city-owned property located in Section 22, Block 40, Township 1 South, T&P RR Co. Survey A-1391, Midland County, Texas. (UTILITIES)

Purpose:

This motion will provide a right of way to bore 151' under City of Midland owned Briarwood Avenue / County Road 60 for a 16" common carrier crude oil pipeline. Proposed pipeline road crossing is between private property owners.

This Right-of-Way License is proposed for a ten (10) year period with automatic ten (10) year renewal upon written request.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000

Annual Lease Rate (9.67 rods x \$20/rod): \$193.97 / \$400.00 minimum

Surface Damages: none / bore

Total Collected: \$1,400.00

Discussion:

This common carrier, steel construction crude oil line will be sixteen inches (16") in diameter

placed within a steel casing from both edges of road Right of Way and buried at least 8' below the road.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement

A handwritten signature in black ink, appearing to read "Robert Patrick".

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: October 7, 2020

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
 Midland, Texas 79702

Licensee: Beta Crude Connector, LLC

Licensee's Representative: **Greg Lamberson**

Licensee's Mailing Address: 4200 East Skelly Drive, Tulsa, Oklahoma 74135

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of ten (10) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for additional terms of ten (10) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to renewal payments being made timely by Licensee..

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and 00/100 Dollars (\$400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and 00/100 Dollars (\$400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Current Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property,

as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel construction pipeline, not to exceed eight (8) inches in diameter, placed within a steel casing, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-two (42) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY**

DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original

condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. Should Licensor request relocation of Licensee's pipeline, property, or casing, Licensor shall grant to Licensee a viable alternate right-of-way. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

■ Personal Injury: \$1,000,000.00 per person

■ Property Damage:	\$1,000,000.00 per occurrence \$100,000.00 per occurrence
<i>Business Automobile Liability:</i>	\$1,000,000.00 combined single limit-- Personal Injury and Property Damage
<i>Workers' Compensation:</i>	Statutory limits
<i>Employers' Liability:</i>	\$1,000,000.00 per accident or occurrence
<i>Umbrella Liability:</i>	\$10,000,000.00 each occurrence \$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,

ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR,

7 | Page

AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND

INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of

governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the

parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensors' governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensors' governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensors' facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensors but is providing a service to Licensee's customers. Licensee is paying Licensors for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensors' governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensors. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensors and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensors or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By:

City Manager

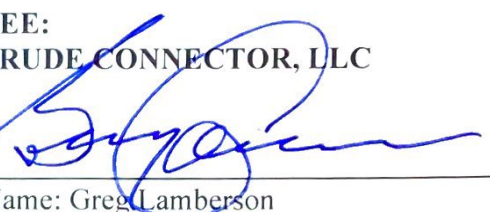
ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
BETA CRUDE CONNECTOR, LLC

By: 

Printed Name: Greg Lamberson

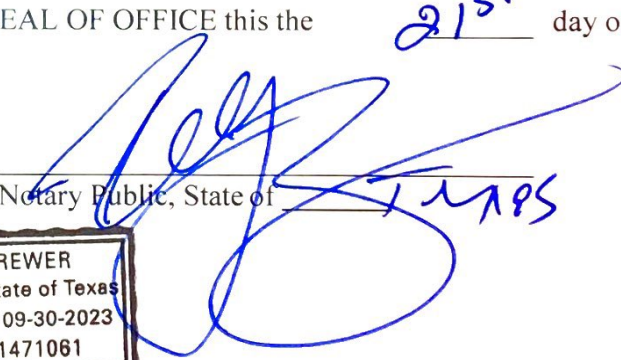
Title: V.P. of Planning

THE STATE OF Texas
COUNTY OF Midland

§
§
§

BEFORE ME, the undersigned authority, on this 21st day of September 2020 personally appeared Greg Lamberson an officer of Beta Crude Connector, LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 21st day of September 2020.


Notary Public, State of Texas

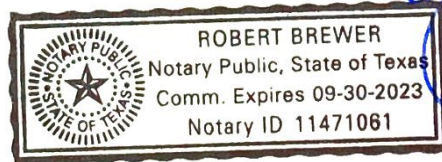
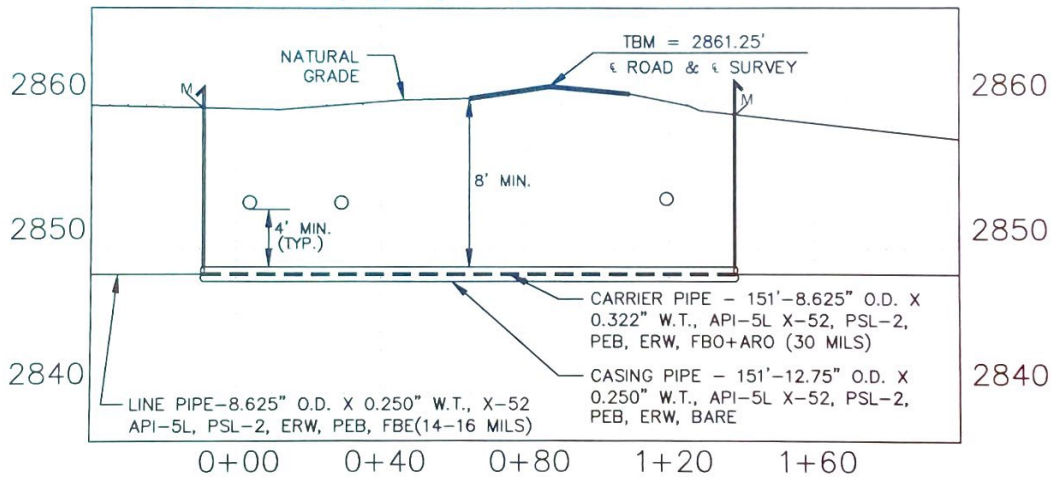
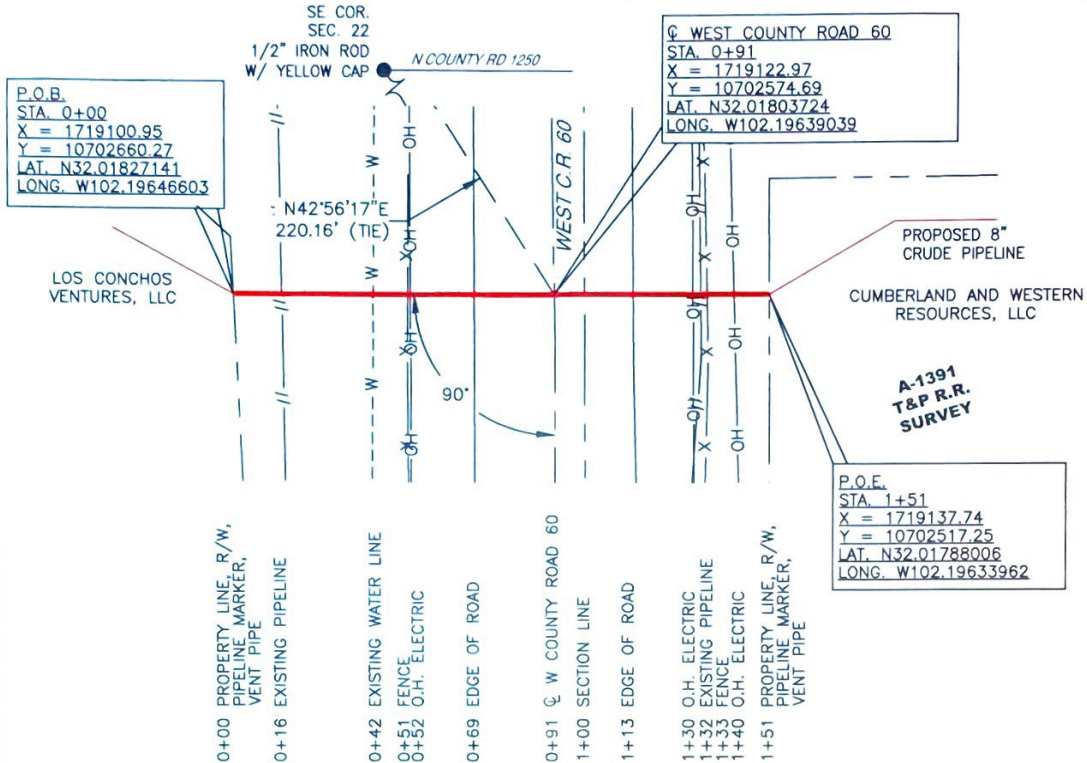


EXHIBIT "A"
PLAN AND PROFILE OF A
CRUDE PIPELINE
UNDERCROSSING WEST COUNTY ROAD 60
MIDLAND COUNTY, TEXAS



NOTES:

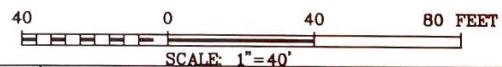
1. ORIGINAL DOCUMENT SIZE: 8.5"x14"
2. POB: POINT OF BEGINNING
3. POE: POINT OF EXIT
4. MUST BE CASSED.

5. BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE TEXAS CENTRAL, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.
6. PIPELINE MARKER TO BE INSTALLED AT EDGE OF ROW.

Barlow's (Hoop Stress) Calculations	
Material Yield Strength, SMYS (PSI)	52000
Wall Thickness, t_w (in)	0.322
Outside Diameter, D (in)	8.625
Design Factor, F	0.72
Long Joint Factor, E	1
Temperature Factor, T	1
Maximum Operating Pressure, MOP (PSI)	1440
Maximum Allowable Internal Pressure, P (PSI)	3882
Hoop Stress (PSI)	19285
% SMYS	37%
Barlow's Formula	
$P = 2(SMYS)(t_w)/D$	



Chad Bell
 9/13/20



NO.	REVISION DESCRIPTION	DATE	BY
4	REVISE ALIGNMENT	06/05/20	TJA
5	REVISE MIN. DEPTH, CHANGE TO CASSED	09/03/20	TJA



PROPOSED PIPELINE CROSSING WEST COUNTY ROAD 60
 LOCATED IN SECTION 22 BLOCK 40 TOWNSHIP 1 SOUTH,
 T&P R.R. SURVEY A-1391
 MIDLAND COUNTY, TEXAS

SURVEY DATE: MAY 08, 2020	WESTERN SPANISH TRAIL
DRAFTING DATE: MAR. 10, 2020	PAGE 1 OF 1
APPROVED BY: RLM	DRAWN BY: GNS

The Pareto Group
 TPG
 A Consulting Company
 TEXAS COA #21175

PACKET

23.373

October 6, 2020



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/10/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 1300 S. Main Tulsa OK 74119		CONTACT NAME: Denise Bergschneider PHONE (A/C, No, Ext): 918-884-2900 E-MAIL ADDRESS: Denise_Bergschneider@ajg.com FAX (A/C, No): 918-884-2999	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Scottsdale Insurance Company	
		INSURER B: Mid-Continent Casualty Company	
		INSURER C: National American Insurance Company (OK)	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1742975502 **REVISION NUMBER:**

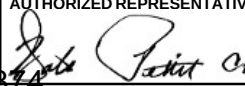
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	ENS0005527	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	04-CA-002839459	6/14/2020	6/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	XNS0005674	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	Y	OW23880535	1/1/2020	1/1/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 General Liability Policy includes Additional Insured Endorsement CG2010 10 01, Additional Insured Endorsement (completed operations) CG2037 10 01, Waiver of Subrogation Endorsement CG4 04 05 09, in favor of Certificate Holder as required by written contract. Excess Policy is follow form per CX00 01 04 13. Automobile Policy includes Additional Insured Endorsement MA2004 and Waiver of Subrogation Endorsement MA2003 in favor of Certificate Holder as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Midland 300 N. Loraine Midland TX 79701 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

PACKET

23.374

October 6, 2020

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EXHIBIT "A"
PLAN AND PROFILE OF A
CRUDE PIPELINE
UNDERCROSSING WEST COUNTY ROAD 60
MIDLAND COUNTY, TEXAS

P.O.B.
 STA. 0+00
 X = 1719100.95
 Y = 10702660.27
 LAT. N32.01827141
 LONG. W102.19646603

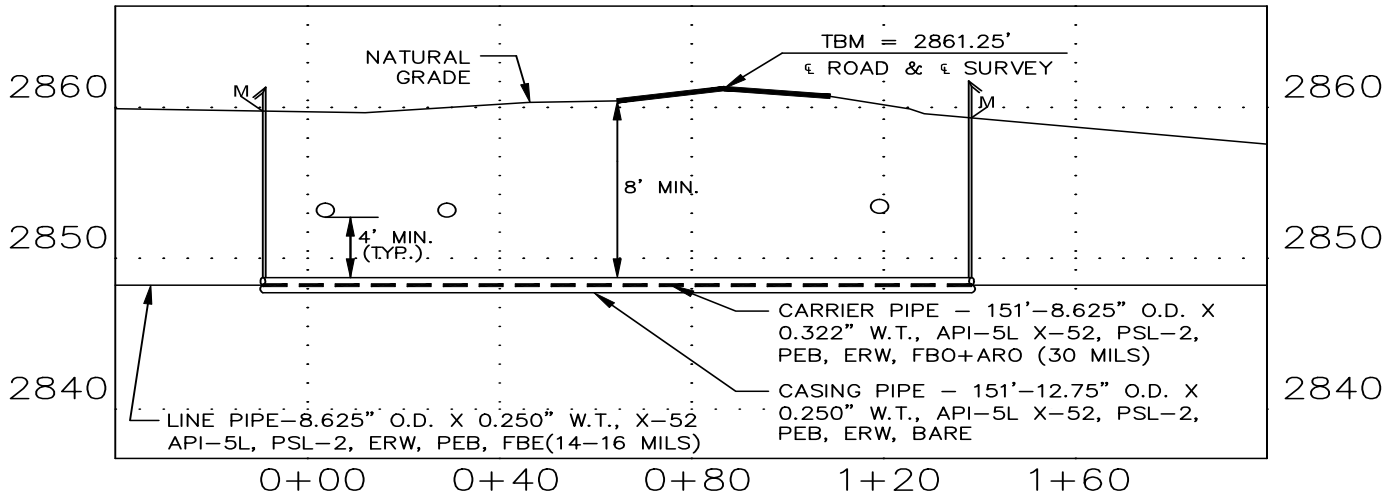
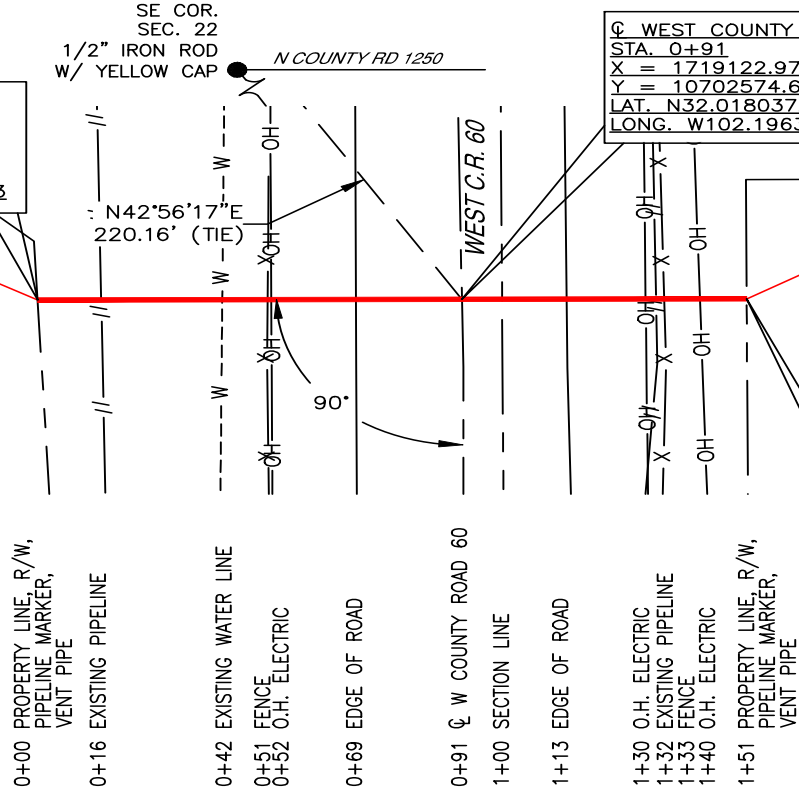
WEST COUNTY ROAD 60
 STA. 0+91
 X = 1719122.97
 Y = 10702574.69
 LAT. N32.01803724
 LONG. W102.19639039

P.O.E.
 STA. 1+51
 X = 1719137.74
 Y = 10702517.25
 LAT. N32.01788006
 LONG. W102.19633962

LOS CONCHOS
 VENTURES, LLC

CUMBERLAND AND WESTERN
 RESOURCES, LLC

A-1391
T&P R.R.
SURVEY



NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5"x14"
2. POB: POINT OF BEGINNING
3. POE: POINT OF EXIT
4. MUST BE CASIED.

5. BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE TEXAS CENTRAL, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.
6. PIPELINE MARKER TO BE INSTALLED AT EDGE OF ROW.

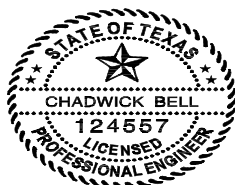
Barlow's (Hoop Stress) Calculations

Material Yield Strength, SMYS (PSI)	52000
Wall Thickness, t_w (in)	0.322
Outside Diameter, D (in)	8.625
Design Factor, F	0.72
Long Joint Factor, E	1
Temperature Factor, T	1
Maximum Operating Pressure, MOP (PSI)	1440

Maximum Allowable Internal Pressure, P (PSI)	3882
Hoop Stress (PSI)	19285
% SMYS	37%

Barlow's Formula

$$P = 2(SMYS)(t_w)/D$$



Clad Bell
 9/3/2020 23.375



SCALE: 1"=40'

NO.	REVISION DESCRIPTION	DATE	BY
4	REVISE ALIGNMENT	06/05/20	TJA
5	REVISE MIN. DEPTH, CHANGE TO CASIED	09/03/20	TJA

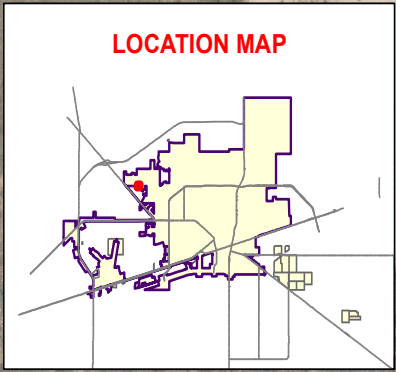


BCC

BETA CRUDE CONNECTOR, LLC

PROPOSED PIPELINE CROSSING WEST COUNTY ROAD 60
 LOCATED IN SECTION 22 BLOCK 40 TOWNSHIP 1 SOUTH,
 T&P R.R. SURVEY A-1391
 MIDLAND COUNTY, TEXAS

SURVEY DATE: MAY 08, 2020	WESTERN SPANISH TRAIL
DRAFTING DATE: MAR. 10, 2020	PAGE 1 OF 1
APPROVED BY: RLM	FILE: TXMD-16.5CR-WST



BLK 40-1-S
SEC 22

BLK 40-1-S
SEC 23

PIPELINE TOTAL LENGTH:
8.95 RODS (147.68 FEET)

BRIARWOOD AV

N CR 1250

BLK 40-1-S
SEC 27

BLK 40-1-S
SEC 26

Date: 9/10/2020

Legend

- Proposed Pipeline
- Street
- Survey Section



Proposed Pipeline ROW Beta Crude Connector, LLC

October 6, 2020

0 50 100 Feet

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A
SURVEY PRODUCT NOR IS IT DESIGNED TO
BE USED AS A PRIMARY TOOL IN PERMITTING
OR OTHER DECISIONS BASED SOLELY ON THE
INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.



City Council Meeting

Item Number: 24
Meeting Date: October 6, 2020
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 4.91-ACRE UTILITY EASEMENT OUT OF SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AT A COST NOT TO EXCEED \$122,850.00; AND ORDERING RECORDATION BY THE CITY SECRETARY (UTILITIES)

Purpose:

This resolution accepts a Public Use Easement from Western-T Corporation, for a 60' wide right of way for the construction and operation of the 24" Northeast water transmission pipeline

Recommended City Council Action:

Approve

Fiscal Impact:

Compensation for this right of way is a one-time payment of \$122,850.00 mutually agreed and based on current land values noted in the Appraisal completed by WT Appraisal, Inc. dated March 6, 2020.

Discussion:

This 4.91-acre section of Right of Way is the last single land section for the Northeast Water Transmission line

The Public Utility Easement is attached, as is a plat showing the proposed easement, Staff supports accepting this dedication.

Dolet Patel

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A 4.91-ACRE UTILITY EASEMENT OUT OF SECTION
8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND
COUNTY, TEXAS, AT A COST NOT TO EXCEED
\$122,850.00; AND ORDERING RECORDATION BY THE
CITY SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a 4.91-acre easement out of Section 8, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, at a cost not to exceed \$122,850.00, for the use and benefit of the public for utility purposes (the “Easement”), a copy of the instrument granting to the City said Easement being attached hereto as Exhibit “1” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds the price proposed for said utility easement to be fair and reasonable;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. That the Easement is hereby accepted.

SECTION TWO. That the City Secretary is hereby authorized and directed to file the instrument granting to the City said Easement in the Deed Records of Midland County, Texas.

SECTION THREE. Funding is hereby appropriated in Fund 370 in the Northeast Utilities Project.

SECTION FOUR. That upon receipt of proper invoice or statement approved by the City Manager, the City Comptroller is hereby authorized and directed to pay for said utility easement out of funds available in Fund 370 in the Northeast Utilities Project.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Carl Craig, Utilities Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

S:\Resolutions\Utilities\Easement\2020\Western-T Corporation - Utility Easement.wpd

Exhibit "1"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

PUBLIC USE EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THAT, **WESTERN-T CORPORTATION** ("Grantor") for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including benefits accruing and to accrue to the remainder of Grantor's property, does hereby GRANT, BARGAIN, SELL AND CONVEY to the **CITY OF MIDLAND, TEXAS** ("Grantee"), a home-rule municipal corporation, whose address is 300 North Loraine, Midland, Texas 79701, the non-exclusive right to construct, install, operate, use, maintain, repair, modify, and replace a fresh water transmission pipeline ("the Pipeline") not to exceed twenty four inches (24") in nominal pipeline diameter and any necessary appurtenant facilities (collectively, the "Public Improvements"), in, on, upon, over, under, across, along and through the following described property owned by Grantor ("the Easement"):

A 4.91 acre tract of land located in Section 8 Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas, being more fully described in the attached **Exhibit A** (the "Easement Property").

1. All work to be performed by Grantee or its agents, employees, representatives, or any other persons acting under its control or at its direction or request shall be done:

- a. at the sole risk, cost, and expense of Grantee;
- b. in accordance with the applicable requirements of all Federal, state, and local governmental and regulatory authorities having jurisdiction, including, without limitation, all applicable environmental laws and worker health and safety laws;
- c. in a manner that will not unreasonably interfere with access to the adjacent property of Grantor; and
- d. in a manner that will create the least reasonably possible disturbance or interference with uses of the Easement Property or adjoining property of Grantor by Grantor or other parties with existing rights in such properties or otherwise unduly interfere with the rights of any other lessees, licensees, or permittees.

2. The Easement Property is to be used only as the site to construct the Public Improvements. The Pipeline is to be buried to a minimum depth of forty-eight inches (48") below the surface of the ground and any then existing drainage ditches, creeks and roads, except at those locations where solid rock is encountered, the Pipeline may be buried to a minimum

depth of twenty-four (24") inches below the surface of the ground. Grantee shall restore the surface as nearly as reasonably possible as it was prior to the construction of the Pipeline. During the construction, repair, removal, or other operations regarding the Pipeline all ditching or trenching shall be done in such a manner so that the top soil will be separated from the balance of the dirt removed in making the ditch or trench. In backfilling after any such operations, the top soil first removed shall be used as cover soil in such a manner as to result in its being returned to the top of the ditch as top soil. The top soil which was previously removed and stacked shall be spread uniformly over the Pipeline location and fertilized and reseeded with seed of the quantity and type reasonably designated by Grantor. Any rocks in excess of four (4") inches shall not be left on the surface but instead shall be removed from lands owned by Grantor. Grantee agrees to dispose of all brush and debris from the Easement Property during construction by removing said brush and debris from the Easement Property and Grantor's adjacent property.

3. The Pipeline is to be used solely for the purpose of transporting fresh water for municipal purposes (herein "Permitted Uses"). Notwithstanding anything herein to the contrary, Grantee shall cause no above-ground appurtenances to be constructed on the Easement Property, with the exception of pipeline markers which, when possible, will be placed at fence lines, property lines, pipeline crossings, road crossings or at any other location required by applicable law, regulation or rule.

4. Grantee and its employees, contractors, agents, successors, and assigns, will have the free and uninterrupted right of passage in, on, upon, over, under, across, along and through the Easement Property for the purpose of establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, altering, operating, maintaining, accessing, inspecting, repairing, relocating and removing the Public Improvements, together with the right of ingress, egress and regress for such purposes in, on, upon, over, under, across, along and through the Easement Property. The Easement Property subject hereto is not a blanket easement and does not grant Grantee access to any property of the Grantor that is not a part of the Easement Property, without Grantor's expressed permission.

5. Grantee agrees, to the extent reasonably practicable, to use gates and roadways designated by Grantor where available in connection with Grantee's use of the Easement Property. To the extent any roads, access points, or lands are damaged by Grantee or its agents or representatives, Grantee shall promptly repair such damage. Grantee agrees it shall not cut or go over any fence at any time in connection with Grantee's use of the Easement Property without first obtaining Grantor's express written permission. Grantee will restore all fences to as good or better condition as they were prior to the construction of the Public Improvements. Replacement fencing shall consist of five (5) strands of ten (10) gauge barbed wire tied with twelve (12) gauge steel wire and securely attached to heavy steel drive posts set two feet (2') or more in the ground at twenty (20) feet intervals. In the event it becomes necessary to install a new gate, all openings in fences shall be made by using good and sufficient "H" braces constructed of steel pipe posts of at least four (4) inches in diameter, six (6) feet wide and at least three (3) feet of pipe set in concrete, on both sides of the opening and shall be secured by use of a dead man. At each such opening a cattle guard shall be built at least fifteen (15) inches above the ground or have a pit two feet deep underground, and, at the request of Grantor, a sixteen foot (16') metal gate of the same or similar quality construction and materials already existing on Grantor's lands shall be installed over the cattle guard. All cattle guards and gates in fences shall be left in place at the termination of the Easement to become property of the Grantor, free of cost, or removed if

requested by Grantor. All fence wire shall be reattached to the cattle guards, and all guards shall be at least twenty (20) feet wide and six (6) inches across. Grantee and all persons entering or leaving the Easement Property in connection with Grantee's use of the Easement Property shall keep all outside and interior gates securely closed except when actually passing through. Grantee and all persons entering or leaving the Easement Property in connection with Grantee's use of the Easements shall also keep all outside gates and all other gates designated by Grantor securely locked. Grantor shall allow Grantee to install its own lock if Grantee so chooses.

6. Grantor may not use any part of the Easement Property described herein if its use will damage, destroy, injure or unduly interfere with the Grantee's use of the Easement Property. The rights and privileges granted herein are nonexclusive and Grantor reserves and retains the right to convey similar and/or dissimilar rights and easements to others, provided that such conveyances do not interfere with the rights granted herein. Without limiting the foregoing and subject to the following provisions, Grantor reserves the right to construct, maintain, and operate roads, streets, pipelines, gas lines, electric lines, water lines, sewer lines, all types of utility lines, irrigation flow lines, equipment or other improvements as may relate to ranching, agricultural, residential or commercial use of the lands, and to grant other easements and rights of way across the Easement Property granted herein with the exception that Grantor may not use any part of the Easement Property if such use will damage, destroy, injure, and/or unduly interfere with the Grantee's use of the Easements for the Permitted Uses and provided that all of Grantee's required and applicable spacings, including depth separation limits and other protective requirements, are met by Grantor. All such proposed construction across the Easement property shall be subject to review and approval by Grantee (which shall not be unreasonably withheld, conditioned, or delayed). Grantor shall also (i) comply with all state One Call requirements; (ii) allow Grantee representatives to be present during construction; and (iii) indemnify and hold harmless Grantee for any damages resulting from Grantor's construction. Grantor is not permitted to conduct any actions that may unreasonably interfere with Grantee's exercise of the rights hereby conveyed, including access to the Easements and the safe operation of the Pipeline. Notwithstanding the foregoing, Grantor shall be permitted to extract oil, gas and other minerals from under the Easements by directional drilling and other means, so long as such activities do not damage, destroy, injure, and/or unduly interfere with the Grantee's use of the Easements for the purposes for which the Easements are being sought by Grantee.

7. The consideration paid by Grantee includes the market value of the Easement Property, any and all damages to the Grantor's remaining property and for reasonably anticipated damages caused to the surface of Grantor's lands within the Easement Property during the initial construction of the Public Improvements. The initial consideration does not, however, cover any damages, which may accrue to Grantor's other lands, the Easement Property from time to time by reason of the operation, maintenance, repair, alteration, and/or servicing of the Public Improvements. Grantee shall pay Grantor for any and all such reasonable damages promptly as they may accrue.

8. Grantee will not have the right to establish a pro rata charge to recover the cost of the Public Improvements. Grantee agrees that the Grantor (and its successors and assigns) will be entitled to service taps into or line extensions from the water pipeline as may be requested to service Grantor's adjacent property, all without any pro rata charge, taking into account the possibility of the easement being under a public street; provided, however, that Grantor (and its successors and assigns) shall pay the cost of installing such service taps or line extensions.

9. **INDEMNITY.** To the extent allowed by law Grantee shall defend, indemnify, protect and hold harmless Grantor, Grantor's heirs, successors, assigns, transferees, employees, agents, lessees, contractors, subcontractors, as well as trustees, beneficiaries, relatives, partners, officers, directors and related or affiliated entities (collectively the "Grantor Parties") from any and all liens, claims, demands, costs (including but not limited to reasonable attorneys' fees accountant's fees, engineer's fees consultant's fees and expert's fees), expenses, damages, losses and causes of action for damages because of injury to persons (including death) and injury or damage to or loss of any property or improvements arising from or in connection with Grantee's use of the Easement Property including but not limited to establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, relocating, and removing, in whole or in part, the Public Improvements, together with above- and below-ground appurtenances for the operation of the Public Improvements, over, across, under and upon the Easement Property.

10. Grantee will not create or permit to be created or remain, and will discharge, at Grantee's sole cost and expense, any and all encumbrances or charges levied on account of any builder's, supplier's, mechanic's, laborer's, materialmen's or similar encumbrance or charge upon the Easement Property or other property of Grantor or any part thereof or the income derived therefrom, with respect to any work or services performed or material furnished by or at the direction of Grantee. If any such encumbrances or charges shall at any time be filed against the Easements or the other property of Grantor or any part thereof by reason of work or services performed or material furnished by or at the direction of Grantee, Grantee within thirty (30) days after the filing thereof will cause the same to be fully discharged and released of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

11. By its exercise of its rights hereunder, Grantee will not (i) cause or permit the Easement Property, any other property of Grantor, or Grantor to be in violation of Applicable Environmental Laws (as hereinafter defined); or (ii) do anything or permit anything to be done by Grantee, its contractors, subcontractors, agents or employees that will result in any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Easement Property resulting from any cause, including but not limited to spills or leaks or oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds, or will subject the Easement Property, any other property of Grantor, or Grantor to any remedial obligations under applicable laws pertaining to health or the environment including, but not limited to, the Oil Pollution Act, 33 U.S.C. 2701 *et. seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et. seq.*, the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.*, the Clean Air Act, 42 U.S.C. 7661, the Clean Water Act, 33 U.S.C. 1251, and the Safe Drinking Water Act, 42 U.S.C. 300, (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"), as each of said laws may be amended from time to time. Grantee agrees to obtain any permits, licenses or similar authorizations for the Easement Property and Public Improvements by reason of any Applicable Environmental Laws that concern or result from the use of the Easement Property. Grantee will promptly notify Grantor in writing of any existing, pending or, to the best knowledge of Grantee, threatened, investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws concerning

Grantee's use of the Easement Property. Grantee will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Easement Property or any other property of Grantor. Grantee covenants and agrees to keep or cause the Easement Property and any other property of Grantor to be kept free of such hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Grantee's sole cost and expense. If Grantee fails to comply with or perform any of the foregoing covenants and obligations, Grantor may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Easement Property or any other property of Grantor (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be reimbursed by Grantee to Grantor. Grantee grants to Grantor and its agents, employees, contractors and consultants access to the Easement Property and the license (which is coupled with an interest and irrevocable) to remove such hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and agrees to reimburse Grantor for and to hold Grantor harmless from all costs and expenses involved therewith. The terms "hazardous substance" and "release" and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in all Applicable Environmental Laws; provided, that if any of them is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such. In addition to the cash consideration paid for the Easements and any other payments required by this Agreement, Grantee shall pay Grantor damages caused by any spills, leaks, or releases from the Public Improvements or Grantee's other use of the Easement Property in the amount of the actual damages sustained.

12. ENVIRONMENTAL INDEMNITY. To the extent allowed by law Grantee agrees to release and indemnify Grantor from and against, and to reimburse Grantor with respect to, any and all claims, demands, losses, damages, liabilities, causes of action, judgment, penalties, costs and expenses (including reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Grantor at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Grantee to perform any obligation herein required to be performed by Grantee regarding Applicable Environmental Laws, (b) any violation of Applicable Environmental Laws, relating to the Easement, by Grantee, its contractors, subcontractors, agents or employees occurring after Grantee's acquisition of the Easement Property, (c) the removal of hazardous substances or solid wastes that result from the use by Grantee, its contractors, subcontractors, agents or employees, from the Easement Property or any other adjacent property of Grantor (or if removal is prohibited by law, the taking of whatever action is required by law), and (d) any act, omission or event occurring after Grantee's acquisition of these Easement Property (including, without limitation, the presence on the Easement Property or release from the Easement Property of hazardous substances or solid wastes disposed of or otherwise released after Grantee's acquisition of the Easement Property), resulting from or in connection with the use of such Easement Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. Any amount to be paid under this paragraph by Grantee to Grantor shall be paid within sixty (60) days of Grantee's receipt of demand therefor from Grantor. Nothing in this paragraph or elsewhere in this Easement shall limit or impair any rights or remedies of Grantor against Grantee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

or impair any rights or remedies of Grantor against Grantee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

13. If, at any time after five (5) years from the date hereof, Grantee should abandon all of the rights and Permitted Uses granted herein, or shall completely fail to use the Easement for the purposes granted herein, and if such abandonment or total nonuse should continue for a continuous thirty-six (36) month period, this Agreement and the Easements shall terminate and revert to Grantor, Grantor's heirs, legal representatives, and assigns. Grantee shall ensure that the pipeline is abandoned in an environmentally safe manner in accordance with applicable laws, rules and regulations.

14. This grant is made expressly subject to any and all valid and existing rights-of-way, easements, and leases of record or actually occupied on the ground which may affect the Easement, including but not limited to pipelines, power lines, and roadways, the rights of any and all tenants in possession whether under recorded or unrecorded leases, even though not named herein, and subject to the rights of any and all owners of oil, gas, and mineral interests and royalties.

15. Miscellaneous.

- a. This Easement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any cause of action for enforcement of this Agreement shall be in Midland County, Texas.
- b. In case any one or more of the provisions contained in this Easement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- c. This Easement constitutes the sole and entire agreement between the parties and cannot be amended except by written instrument signed by both parties.
- d. If Grantee is a corporation, partnership, or other entity, each individual executing this Easement on behalf of Grantee represents that he has full power and authority to enter into this Easement.

TO HAVE AND TO HOLD the above described property and rights unto Grantee, its successors and assigns, forever, and Grantor does hereby bind itself, its successors and/or assigns to warrant and defend said Easement Property unto Grantee, its successors and assigns, by, through, and under Grantor, but not otherwise, provided that this Easement is expressly made subject to all prior grants and conveyances of record which cover or include rights in any of the lands that are the subject of this Easement, and Grantor specifically disclaims any warranty to the extent that such prior grants and conveyances of record conflict with the rights granted in this Easement..

IN WITNESS WHEREOF, this instrument is executed this 22nd day September of A.D., 2020.

GRANTOR

Western-T Corporation
P.O. Box 10512
Midland, Texas 79702-7512

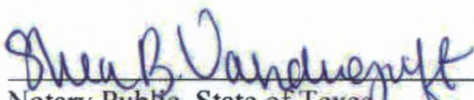
By: 
S. Javaid Anwar, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 22 day of September, 2020, by S. Javaid Anwar in the capacity herein stated.

MY COMMISSION EXPIRES

3-7-2021


Notary Public, State of Texas

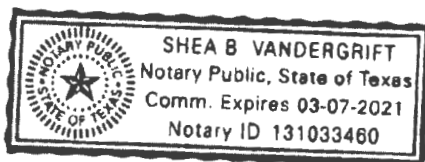


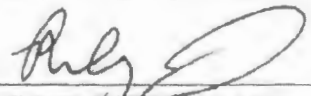
Exhibit A



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	60.00'	S75° 34' 58" W
L2	3327.35'	N14° 21' 05" W
L3	180.00'	N75° 52' 01" E
L4	120.01'	S14° 21' 11" E
L5	120.00'	S75° 52' 01" W
L6	3207.04'	S14° 21' 05" E

I, RILEY ELMER GRIFFITH, R.P.L.S. #5863 DO
HEREBY CERTIFY THAT THE PLAT HERON
WAS PREPARED FROM AN ACTUAL SURVEY
MADE ON THE GROUND DURING THE MONTH

OF APRIL, 2019


RILEY ELMER GRIFFITH, R.P.L.S. #5863

DATE 01/17/2020



BEING A 4.914 ACRE TRACT OUT OF SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING OUT OF A 649.61 ACRE TRACT RECORDED IN DOCUMENT NO. 2012-20497, OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS, SAID 4.914 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS AND DISTANCES ARE GRID, NAD 83 TEXAS CENTRAL ZONE BASED ON GPS OBSERVATIONS

BEGINNING AT A POINT (N: 10,718,171.02; E: 1,737,210.79) ON THE SOUTH LINE OF SAID SECTION 8 FOR THE SOUTHEAST CORNER OF THIS TRACT, WHERE A FOUND 1/2 INCH IRON ROD AT THE SOUTHEAST CORNER OF SAID SECTION 8 BEARS 120.00' N 75° 52' 01" E;

THENCE SOUTH 75 DEGREES 34 MINUTES 58 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 8, A DISTANCE OF 60.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE NORTH 14 DEGREES 21 MINUTES 05 SECONDS WEST, PARALLEL TO THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 3,327.35 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75 DEGREES 52 MINUTES 01 SECONDS EAST A DISTANCE OF 180.00 FEET TO A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "PLS 1974" AT THE NORTHWEST CORNER OF A 44.59 ACRE EASEMENT RECORDED IN DOCUMENT NO. 2016-22809, OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS, SAME BEING ON THE EAST LINE OF SAID SECTION 8, AND BEING THE NORTHEAST CORNER OF THIS TRACT, WHERE A FOUND 2 INCH IRON PIPE AT THE NORTHWEST CORNER OF SAID SECTION 8 BEARS 1,972.11' N 14° 21' 04" W AND 3,364.06' S 75° 27' 29" W;

THENCE SOUTH 14 DEGREES 21 MINUTES 11 SECONDS EAST, ALONG THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 120.01 FEET TO A FOUND 1/2 INCH IRON ROD AT THE SOUTHWEST CORNER OF SAID 44.59 ACRE EASEMENT, AND BEING AN ANGLE POINT OF THIS TRACT;

THENCE SOUTH 75 DEGREES 52 MINUTES 01 SECONDS WEST, PARALLEL TO THE NORTH LINE OF THIS TRACT, A DISTANCE OF 120.00 FEET TO AN ANGLE POINT OF THIS TRACT;

THENCE SOUTH 14 DEGREES 21 MINUTES 05 SECONDS WEST, PARALLEL TO THE EAST LINE OF SECTION 8, A DISTANCE OF 3,207.04 FEET TO THE POINT OF BEGINNING CONTAINING AN AREA OF 4.914 ACRES. SURVEYED ON APRIL 10, 2019.

P.O.B.
N: 10,718,171.02
E: 1,737,210.79
FOUND 1/2" I.R.
N 75° 34' 58" E - 120.00'

A PLAT OF A
4.914 ACRE TRACT
OUT OF
SECTION 8, BLOCK 39, T-1-S
T&P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

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PUBLIC USE EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
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- c. in a manner that will not unreasonably interfere with access to the adjacent property of Grantor; and
- d. in a manner that will create the least reasonably possible disturbance or interference with uses of the Easement Property or adjoining property of Grantor by Grantor or other parties with existing rights in such properties or otherwise unduly interfere with the rights of any other lessees, licensees, or permittees.

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5. Grantee agrees, to the extent reasonably practicable, to use gates and roadways designated by Grantor where available in connection with Grantee's use of the Easement Property. To the extent any roads, access points, or lands are damaged by Grantee or its agents or representatives, Grantee shall promptly repair such damage. Grantee agrees it shall not cut or go over any fence at any time in connection with Grantee's use of the Easement Property without first obtaining Grantor's express written permission. Grantee will restore all fences to as good or better condition as they were prior to the construction of the Public Improvements. Replacement fencing shall consist of five (5) strands of ten (10) gauge barbed wire tied with twelve (12) gauge steel wire and securely attached to heavy steel drive posts set two feet (2') or more in the ground at twenty (20) feet intervals. In the event it becomes necessary to install a new gate, all openings in fences shall be made by using good and sufficient "H" braces constructed of steel pipe posts of at least four (4) inches in diameter, six (6) feet wide and at least three (3) feet of pipe set in concrete, on both sides of the opening and shall be secured by use of a dead man. At each such opening a cattle guard shall be built at least fifteen (15) inches above the ground or have a pit two feet deep underground, and, at the request of Grantor, a sixteen foot (16') metal gate of the same or similar quality construction and materials already existing on Grantor's lands shall be installed over the cattle guard. All cattle guards and gates in fences shall be left in place at the termination of the Easement to become property of the Grantor, free of cost, or removed if

requested by Grantor. All fence wire shall be reattached to the cattle guards, and all guards shall be at least twenty (20) feet wide and six (6) inches across. Grantee and all persons entering or leaving the Easement Property in connection with Grantee's use of the Easement Property shall keep all outside and interior gates securely closed except when actually passing through. Grantee and all persons entering or leaving the Easement Property in connection with Grantee's use of the Easements shall also keep all outside gates and all other gates designated by Grantor securely locked. Grantor shall allow Grantee to install its own lock if Grantee so chooses.

6. Grantor may not use any part of the Easement Property described herein if its use will damage, destroy, injure or unduly interfere with the Grantee's use of the Easement Property. The rights and privileges granted herein are nonexclusive and Grantor reserves and retains the right to convey similar and/or dissimilar rights and easements to others, provided that such conveyances do not interfere with the rights granted herein. Without limiting the foregoing and subject to the following provisions, Grantor reserves the right to construct, maintain, and operate roads, streets, pipelines, gas lines, electric lines, water lines, sewer lines, all types of utility lines, irrigation flow lines, equipment or other improvements as may relate to ranching, agricultural, residential or commercial use of the lands, and to grant other easements and rights of way across the Easement Property granted herein with the exception that Grantor may not use any part of the Easement Property if such use will damage, destroy, injure, and/or unduly interfere with the Grantee's use of the Easements for the Permitted Uses and provided that all of Grantee's required and applicable spacings, including depth separation limits and other protective requirements, are met by Grantor. All such proposed construction across the Easement property shall be subject to review and approval by Grantee (which shall not be unreasonably withheld, conditioned, or delayed). Grantor shall also (i) comply with all state One Call requirements; (ii) allow Grantee representatives to be present during construction; and (iii) indemnify and hold harmless Grantee for any damages resulting from Grantor's construction. Grantor is not permitted to conduct any actions that may unreasonably interfere with Grantee's exercise of the rights hereby conveyed, including access to the Easements and the safe operation of the Pipeline. Notwithstanding the foregoing, Grantor shall be permitted to extract oil, gas and other minerals from under the Easements by directional drilling and other means, so long as such activities do not damage, destroy, injure, and/or unduly interfere with the Grantee's use of the Easements for the purposes for which the Easements are being sought by Grantee.

7. The consideration paid by Grantee includes the market value of the Easement Property, any and all damages to the Grantor's remaining property and for reasonably anticipated damages caused to the surface of Grantor's lands within the Easement Property during the initial construction of the Public Improvements. The initial consideration does not, however, cover any damages, which may accrue to Grantor's other lands, the Easement Property from time to time by reason of the operation, maintenance, repair, alteration, and/or servicing of the Public Improvements. Grantee shall pay Grantor for any and all such reasonable damages promptly as they may accrue.

8. Grantee will not have the right to establish a pro rata charge to recover the cost of the Public Improvements. Grantee agrees that the Grantor (and its successors and assigns) will be entitled to service taps into or line extensions from the water pipeline as may be requested to service Grantor's adjacent property, all without any pro rata charge, taking into account the possibility of the easement being under a public street; provided, however, that Grantor (and its successors and assigns) shall pay the cost of installing such service taps or line extensions.

9. **INDEMNITY.** To the extent allowed by law Grantee shall defend, indemnify, protect and hold harmless Grantor, Grantor's heirs, successors, assigns, transferees, employees, agents, lessees, contractors, subcontractors, as well as trustees, beneficiaries, relatives, partners, officers, directors and related or affiliated entities (collectively the "Grantor Parties") from any and all liens, claims, demands, costs (including but not limited to reasonable attorneys' fees accountant's fees, engineer's fees consultant's fees and expert's fees), expenses, damages, losses and causes of action for damages because of injury to persons (including death) and injury or damage to or loss of any property or improvements arising from or in connection with Grantee's use of the Easement Property including but not limited to establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, relocating, and removing, in whole or in part, the Public Improvements, together with above- and below-ground appurtenances for the operation of the Public Improvements, over, across, under and upon the Easement Property.

10. Grantee will not create or permit to be created or remain, and will discharge, at Grantee's sole cost and expense, any and all encumbrances or charges levied on account of any builder's, supplier's, mechanic's, laborer's, materialmen's or similar encumbrance or charge upon the Easement Property or other property of Grantor or any part thereof or the income derived therefrom, with respect to any work or services performed or material furnished by or at the direction of Grantee. If any such encumbrances or charges shall at any time be filed against the Easements or the other property of Grantor or any part thereof by reason of work or services performed or material furnished by or at the direction of Grantee, Grantee within thirty (30) days after the filing thereof will cause the same to be fully discharged and released of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

11. By its exercise of its rights hereunder, Grantee will not (i) cause or permit the Easement Property, any other property of Grantor, or Grantor to be in violation of Applicable Environmental Laws (as hereinafter defined); or (ii) do anything or permit anything to be done by Grantee, its contractors, subcontractors, agents or employees that will result in any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Easement Property resulting from any cause, including but not limited to spills or leaks or oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds, or will subject the Easement Property, any other property of Grantor, or Grantor to any remedial obligations under applicable laws pertaining to health or the environment including, but not limited to, the Oil Pollution Act, 33 U.S.C. 2701 *et. seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et. seq.*, the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.*, the Clean Air Act, 42 U.S.C. 7661, the Clean Water Act, 33 U.S.C. 1251, and the Safe Drinking Water Act, 42 U.S.C. 300, (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"), as each of said laws may be amended from time to time. Grantee agrees to obtain any permits, licenses or similar authorizations for the Easement Property and Public Improvements by reason of any Applicable Environmental Laws that concern or result from the use of the Easement Property. Grantee will promptly notify Grantor in writing of any existing, pending or, to the best knowledge of Grantee, threatened, investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws concerning

Grantee's use of the Easement Property. Grantee will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Easement Property or any other property of Grantor. Grantee covenants and agrees to keep or cause the Easement Property and any other property of Grantor to be kept free of such hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Grantee's sole cost and expense. If Grantee fails to comply with or perform any of the foregoing covenants and obligations, Grantor may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Easement Property or any other property of Grantor (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be reimbursed by Grantee to Grantor. Grantee grants to Grantor and its agents, employees, contractors and consultants access to the Easement Property and the license (which is coupled with an interest and irrevocable) to remove such hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and agrees to reimburse Grantor for and to hold Grantor harmless from all costs and expenses involved therewith. The terms "hazardous substance" and "release" and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in all Applicable Environmental Laws; provided, that if any of them is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such. In addition to the cash consideration paid for the Easements and any other payments required by this Agreement, Grantee shall pay Grantor damages caused by any spills, leaks, or releases from the Public Improvements or Grantee's other use of the Easement Property in the amount of the actual damages sustained.

12. ENVIRONMENTAL INDEMNITY. To the extent allowed by law Grantee agrees to release and indemnify Grantor from and against, and to reimburse Grantor with respect to, any and all claims, demands, losses, damages, liabilities, causes of action, judgment, penalties, costs and expenses (including reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Grantor at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Grantee to perform any obligation herein required to be performed by Grantee regarding Applicable Environmental Laws, (b) any violation of Applicable Environmental Laws, relating to the Easement, by Grantee, its contractors, subcontractors, agents or employees occurring after Grantee's acquisition of the Easement Property, (c) the removal of hazardous substances or solid wastes that result from the use by Grantee, its contractors, subcontractors, agents or employees, from the Easement Property or any other adjacent property of Grantor (or if removal is prohibited by law, the taking of whatever action is required by law), and (d) any act, omission or event occurring after Grantee's acquisition of these Easement Property (including, without limitation, the presence on the Easement Property or release from the Easement Property of hazardous substances or solid wastes disposed of or otherwise released after Grantee's acquisition of the Easement Property), resulting from or in connection with the use of such Easement Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. Any amount to be paid under this paragraph by Grantee to Grantor shall be paid within sixty (60) days of Grantee's receipt of demand therefor from Grantor. Nothing in this paragraph or elsewhere in this Easement shall limit or impair any rights or remedies of Grantor against Grantee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

or impair any rights or remedies of Grantor against Grantee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

13. If, at any time after five (5) years from the date hereof, Grantee should abandon all of the rights and Permitted Uses granted herein, or shall completely fail to use the Easement for the purposes granted herein, and if such abandonment or total nonuse should continue for a continuous thirty-six (36) month period, this Agreement and the Easements shall terminate and revert to Grantor, Grantor's heirs, legal representatives, and assigns. Grantee shall ensure that the pipeline is abandoned in an environmentally safe manner in accordance with applicable laws, rules and regulations.

14. This grant is made expressly subject to any and all valid and existing rights-of-way, easements, and leases of record or actually occupied on the ground which may affect the Easement, including but not limited to pipelines, power lines, and roadways, the rights of any and all tenants in possession whether under recorded or unrecorded leases, even though not named herein, and subject to the rights of any and all owners of oil, gas, and mineral interests and royalties.

15. Miscellaneous.

- a. This Easement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any cause of action for enforcement of this Agreement shall be in Midland County, Texas.
- b. In case any one or more of the provisions contained in this Easement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- c. This Easement constitutes the sole and entire agreement between the parties and cannot be amended except by written instrument signed by both parties.
- d. If Grantee is a corporation, partnership, or other entity, each individual executing this Easement on behalf of Grantee represents that he has full power and authority to enter into this Easement.

TO HAVE AND TO HOLD the above described property and rights unto Grantee, its successors and assigns, forever, and Grantor does hereby bind itself, its successors and/or assigns to warrant and defend said Easement Property unto Grantee, its successors and assigns, by, through, and under Grantor, but not otherwise, provided that this Easement is expressly made subject to all prior grants and conveyances of record which cover or include rights in any of the lands that are the subject of this Easement, and Grantor specifically disclaims any warranty to the extent that such prior grants and conveyances of record conflict with the rights granted in this Easement..

IN WITNESS WHEREOF, this instrument is executed this 22nd day September of A.D., 2020.

GRANTOR

Western-T Corporation
P.O. Box 10512
Midland, Texas 79702-7512

By: 
S. Javaid Anwar, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 22 day of September, 2020, by S. Javaid Anwar in the capacity herein stated.

MY COMMISSION EXPIRES

3-7-2021


Notary Public, State of Texas

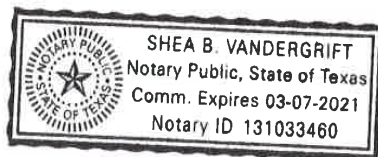


Exhibit A



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	60.00'	S75° 34' 58"W
L2	3327.35'	N14° 21' 05"W
L3	180.00'	N75° 52' 01"E
L4	120.01'	S14° 21' 11"E
L5	120.00'	S75° 52' 01"W
L6	3207.04'	S14° 21' 05"E

I, RILEY ELMER GRIFFITH, R.P.L.S. #5863 DO HEREBY CERTIFY THAT THE PLAT HERON WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND DURING THE MONTH

OF APRIL, 2019


RILEY ELMER GRIFFITH, R.P.L.S. #5863

DATE 01/17/2020



BEING A 4.914 ACRE TRACT OUT OF SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING OUT OF A 649.68 ACRE TRACT RECORDED IN DOCUMENT NO. 2012-20497, OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS, SAID 4.914 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS AND DISTANCES ARE GRID, AND 83 TEXAS CENTRAL ZONE BASED ON GPS OBSERVATIONS

BEGINNING AT A POINT (N: 10,718,171.02; E: 1,737,210.79) ON THE SOUTH LINE OF SAID SECTION 8 FOR THE SOUTHEAST CORNER OF THIS TRACT, WHERE A FOUND 1/2 INCH IRON ROD AT THE SOUTHEAST CORNER OF SAID SECTION 8 BEARS 120.00' N 75°34'58" E;

THENCE SOUTH 75 DEGREES 34 MINUTES 58 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 8, A DISTANCE OF 60.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE NORTH 14 DEGREES 21 MINUTES 05 SECONDS WEST, PARALLEL TO THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 3,327.35 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75 DEGREES 52 MINUTES 01 SECONDS EAST A DISTANCE OF 180.00 FEET TO A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "PLS 1974" AT THE NORTHWEST CORNER OF A 44.59 ACRE EASEMENT RECORDED IN DOCUMENT NO. 2016-2289, OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS, SAME BEING ON THE EAST LINE OF SAID SECTION 8, AND BEING THE NORTHEAST CORNER OF THIS TRACT, WHERE A FOUND 2 INCH IRON PIPE AT THE NORTHWEST CORNER OF SAID SECTION 8 BEARS 1,972.71' N 14°21'04" W AND 5,364.08' S 75°27'29" W;

THENCE SOUTH 14 DEGREES 21 MINUTES 11 SECONDS EAST, ALONG THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 120.01 FEET TO A FOUND 1/2 INCH IRON ROD AT THE SOUTHWEST CORNER OF SAID 44.59 ACRE EASEMENT, AND BEING AN ANGLE POINT OF THIS TRACT;

THENCE SOUTH 75 DEGREES 52 MINUTES 01 SECONDS WEST, PARALLEL TO THE NORTH LINE OF THIS TRACT, A DISTANCE OF 120.00 FEET TO AN ANGLE POINT OF THIS TRACT;

THENCE SOUTH 14 DEGREES 21 MINUTES 05 SECONDS WEST, PARALLEL TO THE EAST LINE OF SECTION 8, A DISTANCE OF 3,207.04 FEET TO THE POINT OF BEGINNING CONTAINING AN AREA OF 4.914 ACRES. SURVEYED ON APRIL 10, 2019.

FOUND 1/2" I.R. WITH PLASTIC CAP MARKED PLS 1974"

FOUND 1/2" I.R.

P.O.B.
N: 10,718,171.02
E: 1,737,210.79

FOUND 1/2" I.R.

N 75° 34' 58" E - 120.00'

A PLAT OF A
4.914 ACRE TRACT
OUT OF
SECTION 8, BLOCK 39, T-1-S
T&P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

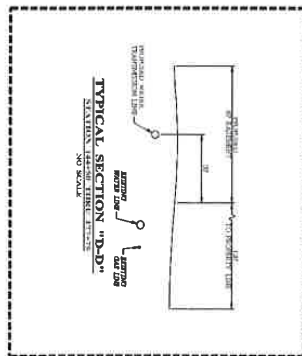
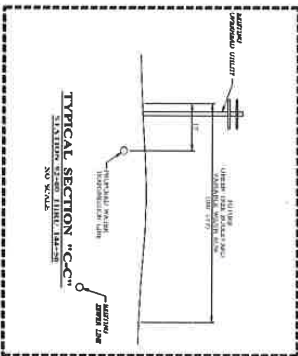


ENPROTEC/HIBBS & TODD, INC.
ENVIRONMENTAL AND CIVIL ENGINEERING
405 Cedar Street
250-555-5889
P.O. Box 1000
MPLS Park Regionals Inc. 1001400 & 5000200

18-7227

01/17/2020

PACKET
24.396
October 6, 2020





June 10, 2020

Mr. David Donnell
Land Manager
Western T Corp.
110 N. Marienfeld, Suite 101
Midland, TX

RE: Northeast Water Transmission Project / Section 8, Blk 39 / 1S
Offer Letter

Dear Mr. Donnell:

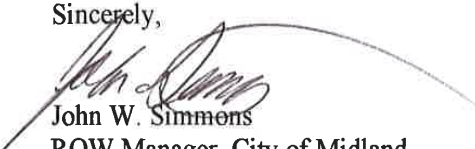
I met with the Utilities Director and he approved your request to add to the previous offer we made regarding the requested right of way for the water project.

Based on your email, the City of Midland offers Twenty Five Thousand Dollars per acre (\$25,000.00) for the 4.914 acres needed for the water line and future roadways. Total compensation to be One Hundred Twenty-Two Thousand Eight Hundred Fifty Dollars (\$122,850.00). With this additional compensation the City will need to use City Easement Documents, upon your acceptance I can get those over to you for execution.

If you have any questions, please contact John Simmons at (432-685-7470).

If you desire to accept this offer, please sign below and return a signed copy of this offer letter to our office.

Sincerely,


John W. Simmons
ROW Manager, City of Midland

www.MidlandTexas.gov

300 N. Loraine, Midland TX 79701 • 432-685-7251

PACKET
24.398
October 6, 2020

I (We) fully understand the City of Midland's proposal as contained in this agreement and hereby accept the terms and conditions set forth.

OWNER

Date

OWNER

Date

Cc: Carl Craigo, Utilities Director

Jose Ortiz, Engineering Services Director

www.MidlandTexas.gov

300 N. Loraine, Midland TX 79701 • 432-685-7251



City Council Meeting

Item Number: 27
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Joseph Marynak, Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET), BY PERMITTING (1) A REDUCED MINIMUM LOT AREA, (2) A REDUCED MINIMUM LOT WIDTH, AND (3) A REDUCED MINIMUM LOT DEPTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Ramona Ruiz, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.05 – Nonresidential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimensions to be able to rezone her property to RR, Regional Retail District.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located behind 511 North Tyler Street and the location of a defunct garage. The applicant is requesting a special exception to the minimum lot dimensions for the proposed RR, Regional Retail District to be able to proceed with her application of rezoning her property to be able to open a barbershop. The first reading of the zone change for this property from LI, Light Industrial District to RR, Regional Retail District was approved by the City Council on July 14, 2020. The second reading has been postponed pending approval of this special exception.

The property is currently zoned LI, Light Industrial District and meets the minimum lot dimensions for that district; however, the property does not meet the minimum lot dimensions for the proposed RR, Regional Retail District.

Per our City of Midland Zoning Ordinance, Section 5.05 – Nonresidential Zoning District Dimensional Regulations Chart:

RR, Regional Retail District
Lot Dimensions

Minimum Lot Area: 8,000 Square Feet
Minimum Lot Width: 60 Feet
Minimum Lot Depth: 100 Feet

As shown on the survey (Exhibit A) provided, the current lot area is 3,500 square feet, the current lot width is 50 feet, and the current lot depth is 70 feet.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas issues.

Building: (Approved)

No objections with the exception of an acceptable fire separation from existing structures on the same lot. The Building Department must be able to distinguish a two-hour fire separation between the proposed project and any existing structures. Building permits must be pulled.

Planning:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.05 – Nonresidential Zoning District Dimensional Regulations Chart.

This request was approved at the September 22, 2020 City Council meeting.

Should the City Council approve this request, the property shall be subject to conditions A through E.

Conditions:

A. That the property shall significantly conform to the site plan shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

B. That the minimum lot area of this property shall be 3,500 square feet.

C. That the minimum lot width shall be 50 feet.

D. That the minimum lot depth shall be 70 feet.

E. That said special exception shall be of no force or effect unless and until the property is rezoned as RR, Regional Retail District.

Letters of Objection:

As of September 16, 2020, staff has not received any letters of objection.

Attachments:

Survey (Exhibit A)
Application

Maps

A handwritten signature in black ink, appearing to read "Robert Palmer". The signature is fluid and cursive, with the first name "Robert" and last name "Palmer" clearly distinguishable.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET), BY PERMITTING (1) A REDUCED MINIMUM LOT AREA, (2) A REDUCED MINIMUM LOT WIDTH, AND (3) A REDUCED MINIMUM LOT DEPTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 (“Section 11-1-7”) of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the

purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as the west half of Lot 1, Block 4, Moody Addition, City and County of Midland, Texas (the “Property”). Said special exception shall allow (1) a reduced minimum lot area, (2) a reduced minimum lot width, and (3) a reduced minimum lot depth in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from LI, Light Industrial District to RR, Regional Retail District.

SECTION TWO. That said special exception is subject to the following special conditions:

- A. That the dimensions of the Property shall conform to the dimensions shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- B. That the minimum lot area shall be 3,500 square feet.
- C. That the minimum lot width shall be 50 feet.
- D. That the minimum lot depth shall be 70 feet.
- E. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

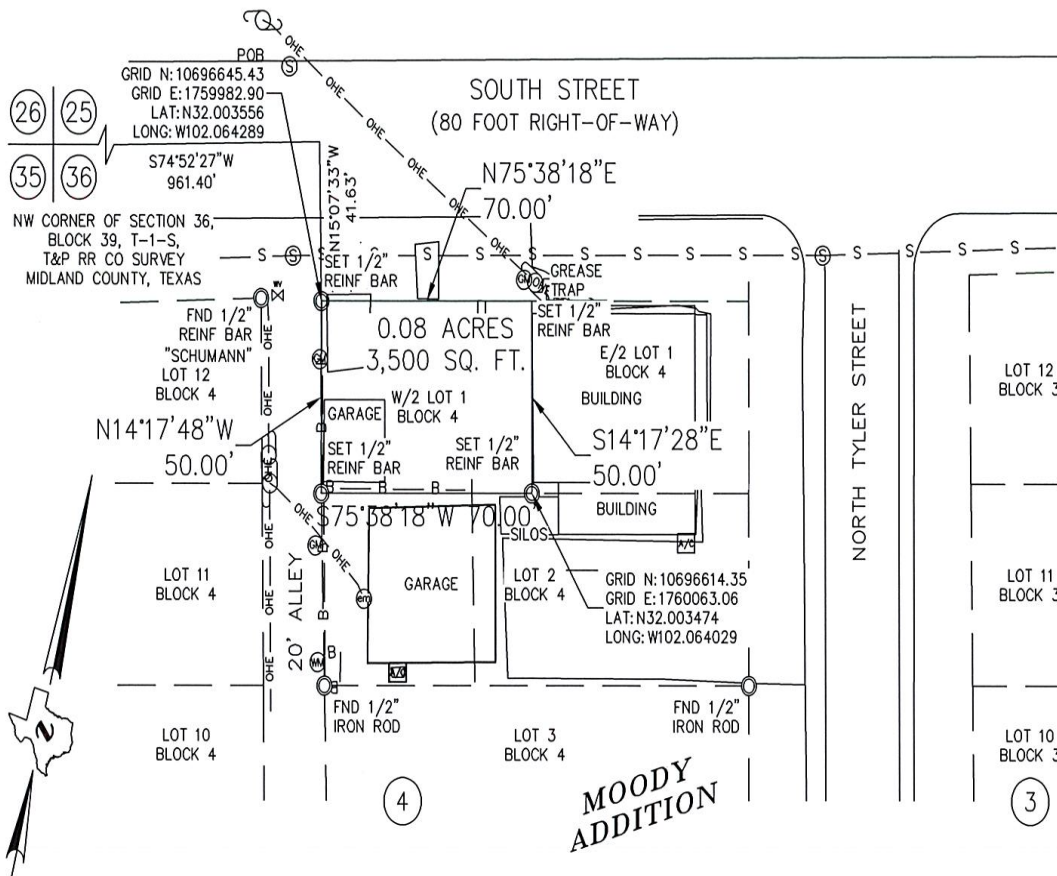
APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



LEGEND:

- S — SEWER LINE
- B — BRICK FENCE
- OHE — OVERHEAD ELECTRIC
- ⊕ UTILITY POLE
- ⊕ E/M ELECTRIC METER
- ⊕ A/C AIR CONDITIONER
- ⊕ G/M GAS METER
- ⊕ C/O CLEAN OUT
- ⊕ W/M WATER METER
- ⊕ W/V WATER VALVE
- ⊕ S/S SANITARY SEWER MANHOLE
- ⊕ MONUMENT AS DESCRIBED

FIELD NOTE DESCRIPTION OF THE SURVEY OF A 0.08 ACRE TRACT OF LAND, ALSO KNOWN AS WEST/2 F LOT 1, BLOCK 4, MOODY ADDITION, OUT OF THE NORTHWEST/4 OF SECTION 36, BLOCK 39, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.08 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR SET FOR THE NORTHWEST CORNER OF THIS TRACT, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 36 BEARS NORTH 15°01'33" WEST 41.63 FEET, AND SOUTH 74°52'27" WEST 961.40 FEET;

THENCE NORTH 75°38'18" EAST 70.00 FEET TO A 1/2" REINF BAR SET FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 14°17'28" EAST 50.00 FEET TO A 1/2" REINF BAR SET FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°38'18" WEST 70.00 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE NORTH 14°17'28" WEST 50.00 FEET TO THE PLACE OF BEGINNING.

SURVEY

W/2 LOT 1
BLOCK 4

MOODY ADDITION

AN ADDITION TO THE CITY OF MIDLAND,
AS PER PLAT OF RECORD IN
VOLUME 1, PAGE 48, DEED RECORDS,

MIDLAND COUNTY, TEXAS

October 6, 2020

SCALE: 1" = 50'

TRACT: 77346
JOB NO.: 77,346

Surveyor Certification

TO THE LIENHOLDERS, RAMONA L RUIZ

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND THAT THERE ARE NO KNOWN DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS-OF-WAY, EXCEPT AS SHOWN HEREON.

DATED THIS 20TH DAY OF MARCH, 2020

[Signature]

RJ DAUM
TEXAS RPLS 4826

PACKET



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY WAS PREPARED WITH BENEFIT OF TITLE COMMITMENT OF NO. 306400 EFFECTIVE DATE FEBRUARY 28, 2020 ISSUED BY FIRST AMERICAN TITLE GUARANTY COMPANY.

ORDINANCE NO. 3525 BLANKET RIGHT OF WAY LICENSE EXECUTED BY THE CITY OF MIDLAND TO WESTERN GAS RESOURCES, INC. DATED SEPTEMBER 11, 2001, AND RECORDED IN VOLUME 1910, PAGE 176, OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS.

COVERING EASTOVER ADDITION AND MOODY ADDITION, VACATING AND ABANDONING OF SAID PORTION OF NORTH ADAMS STREET AND THE WIDENING OF A PORTION OF EAST TEXAS AVENUE AND THE EXTENSION OF JESSE STREET AND SUBJECT TO EXISTING EASEMENTS IN SAID STREETS, EXECUTED BY THE CITY OF MIDLAND, TEXAS, TO THE PUBLIC DATED MAY 26, 1959, AND RECORDED IN VOLUME 294, PAGE 336, DEED RECORDS OF MIDLAND COUNTY, TEXAS.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.



SCHUMANN
ENGINEERING CO.

A LATERAL LAND COMPANY

CIVIL ENGINEERING - LAND SURVEYING
2510 No. F1880 - TEXAS FIRM No. 10149500

800 N. WARREN STREET
SUITE 100
MIDLAND, TEXAS 79701

Office (432) 684-5548



Special Exception Application

Project Number: **E-20-0040**

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)Printed Name: Ramona RuizPhone (432) 212-7523
Email _____

Address

3600 S canty Rd 1230 #248

City

Midland

State

TX

Zip

79706**Property Owner**Printed Name: Ramona RuizPhone ()
Email _____

Address

3600 S county Rd 1230 #248

City

Midland

State

TX

Zip

79706**Representative** (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()
Email _____

Address

City

State

Zip

Street Address: 511 N Tyler St**Legal Description**Lot: 1 Block: 4 Subdivision: _____**Current Zoning:****This property qualifies as an exception to the City Code because:**

- ☒ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: exception of lot size**Submittal and Fees****Items to be submitted with this application form:**

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
 - Parking
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures

Applicant (signature):

Ramona Ruiz

Date:

08/21/2020

Applicant (printed):

Ramona Ruiz

Property Owner (signature):

Ramona Ruiz

Date:

08/21/2020

Property Owner (printed):

Ramona Ruiz

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

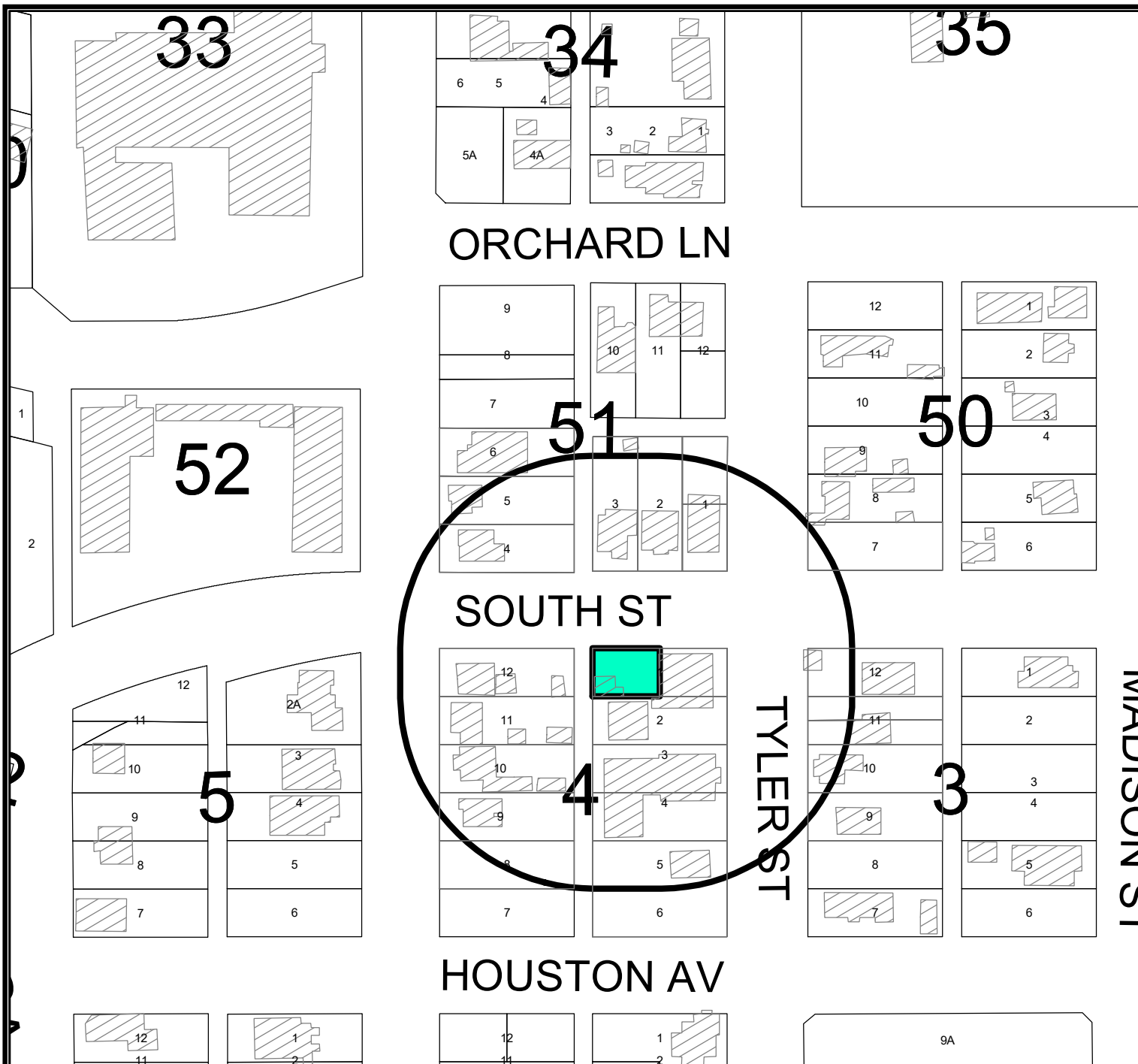
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☐ Property Owner Authorization☐ Dimensioned Site Plan☐ Application Fee☐ Plans in Digital Format (PDF/JPEG)

Check # _____

Received By:

Date:



LOCATION MAP

E-20-0040

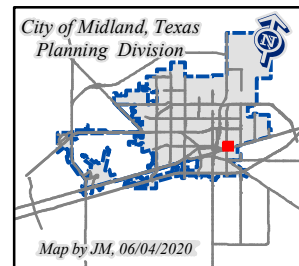
Scale: 1" = 250'

Consider a request by Ramona Ruiz, for a special exception from the City of Midland Zoning Ordinance, Section 5.05 – Nonresidential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimensions on the west half of Lot 1, Block 4, Moody Addition, City and County of Midland, Texas.

Generally located on the south side of South Street, approximately 175 feet west of North Tyler Street. 25.12
(Council District 2)

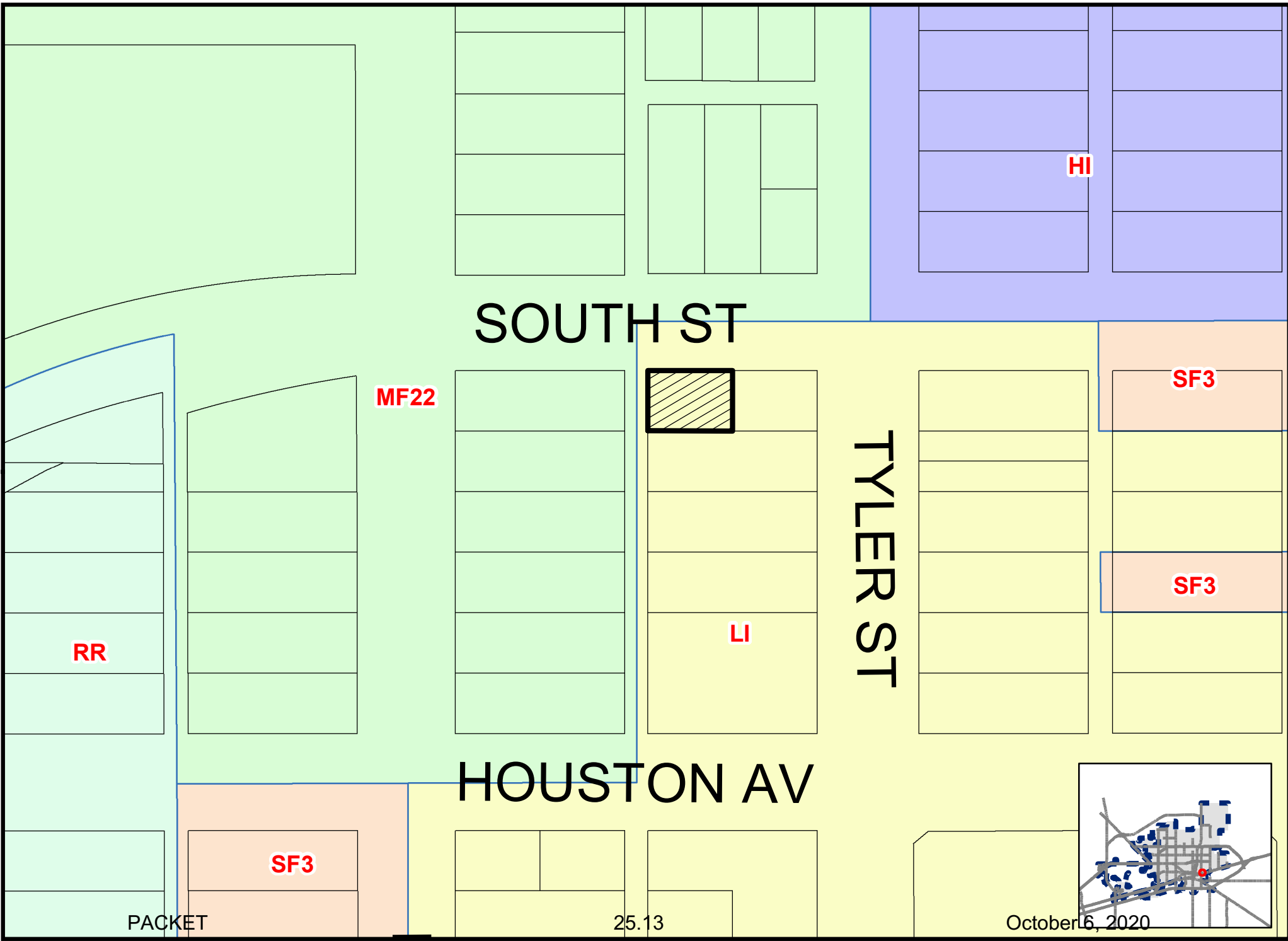
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



October 6, 2020

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING OR IS IT DESIGNED TO BE USED AS A SURVEY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 28
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Joseph Marynak, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION Council District 2 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Ramona Ruiz, is requesting a Zone Change from LI, Light Industrial District to RR, Regional Retail District, on the west half of Lot 1, Block 4, Moody Addition, for a barber shop.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Current Zoning:

LI, Light Industrial District

Surrounding Zoning and Land Use:

The properties to the north and west are zoned MF-22, Multiple Family Dwelling District and are the locations of single family houses. The properties to the east and south are zoned LI, Light Industrial District and are the locations of a bakery and a church, respectively.

Analysis:

The applicant is requesting this zone change for to remodel an existing garage into a barber shop. This use is not permitted in the LI, Light Industrial District, so the applicant is requesting to rezone the property to a district, which allows this use.

As this property is a portion of a lot, it will need to be replatted prior to a building permit being issued. Furthermore, the size of this property is currently 3,500 square feet, which does not meet the minimum lot size requirements of 8,000 square feet for the RR, Regional Retail District or any other zoning district that permits the operation of a barber shop. Therefore, this property will also require a special exception to the minimum lot size requirement

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

The change in floor plan, mainly the small addition and the changing of the doorway on the front of the building will require permits and inspections from the City of Midland Code Administration Division. Per state law, any alteration of a commercial building requires an asbestos report and possible removal of asbestos laden materials before permitting and construction can proceed.

Engineering: (Approved)

No objections to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

As the nearest RR, Regional Retail District is 383 feet away along Lamesa Road and since the existing conditions of this property do not conform to various zoning requirements, staff would recommend denial of this request. However, if approved, staff recommends that it be subject to condition A.

This request was approved at the June 15, 2020 Planning and Zoning Commission meeting and at the July 14, 2020 City Council meeting.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

Staff has not received any letters of objection as of June 8, 2020.

Attachments:

Site Plan
Survey
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE THE WEST HALF OF LOT 1, BLOCK 4, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF SOUTH STREET, APPROXIMATELY 95 FEET WEST OF NORTH TYLER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning the west half of Lot 1, Block 4, Moody Addition, City and County of Midland, Texas (the “Property”) to RR, Regional Retail District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from LI, Light Industrial District to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Zone Change/Planned
District Amendment/Site
Plan Approval

Project Number: 2-20-0180
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Romona L. Ruiz

Address: 3600 S COUNTY RD City: Midland

Phone (432) 212-7523

Email: Ramona@ballb1331@gmail.com

State: TX Zip: 79706

Property Owner

Printed Name: Romona L. Ruiz

Address: 511 N TYLER ST. City: MIDLAND

Phone ()

Email

State: TX Zip: 79701

Representative (if different from Applicant or Property Owner)

Firm: Applicant is Represent Her Self

Printed Name: _____

Address: _____ City: _____

Phone ()

Email

State: _____ Zip: _____

Street Address: 511 N TYLER ST, Midland TX 79701

Legal Description

Lot: W2 1 Block: 4 Subdivision: MOODY Addition

Current Zoning:

Light Industrial District

Proposed Zone: RR, Regional Retail
(List by tracts if more than one district is requested)

Reason for Zone Change Request: CHANGE REQUEST FOR THE OPERATION OF A BARBER SHOP

Present Use of Property: HAS A GARAGE WITH SEWER / WATER AND ELECTRICAL

Proposed Use of Property: FOR INDEPENDENTLY USE OR A BARBER SHOP

How would this zone change affect the public health, safety and welfare? IT WOULD BRING IN TO THE AREA A VALUABLE RESOURCE TO THE PUBLIC TO MAINTAIN GOOD HEALTH AND BRING THE ABANDONED PROPERTY UP IN VALUE

Describe how conditions affecting the property have changed since present zoning designation: THE PROPERTY HAS BEEN ABANDONED FOR MANY YEARS AND I WANT TO HELP THE COMMUNITY IMPROVE BY BRINGING MY CUSTOMERS IN THE AREA A NICE PLACE TO IMPROVE THEIR HEALTH AND MY NEW NEIGHBORS A PRESENT VIEW OTHER THEN A VACANT DIRTY LOT.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee -- Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature): Ramona Laura Ruiz Date: _____

Applicant (printed): RAMONA LAURA RUIZ

Property Owner (signature): Ramona Laura Ruiz Date: _____

Property Owner (printed): RAMONA LAURA RUIZ

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☐ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # _____

Received By: [Signature]

Date: _____

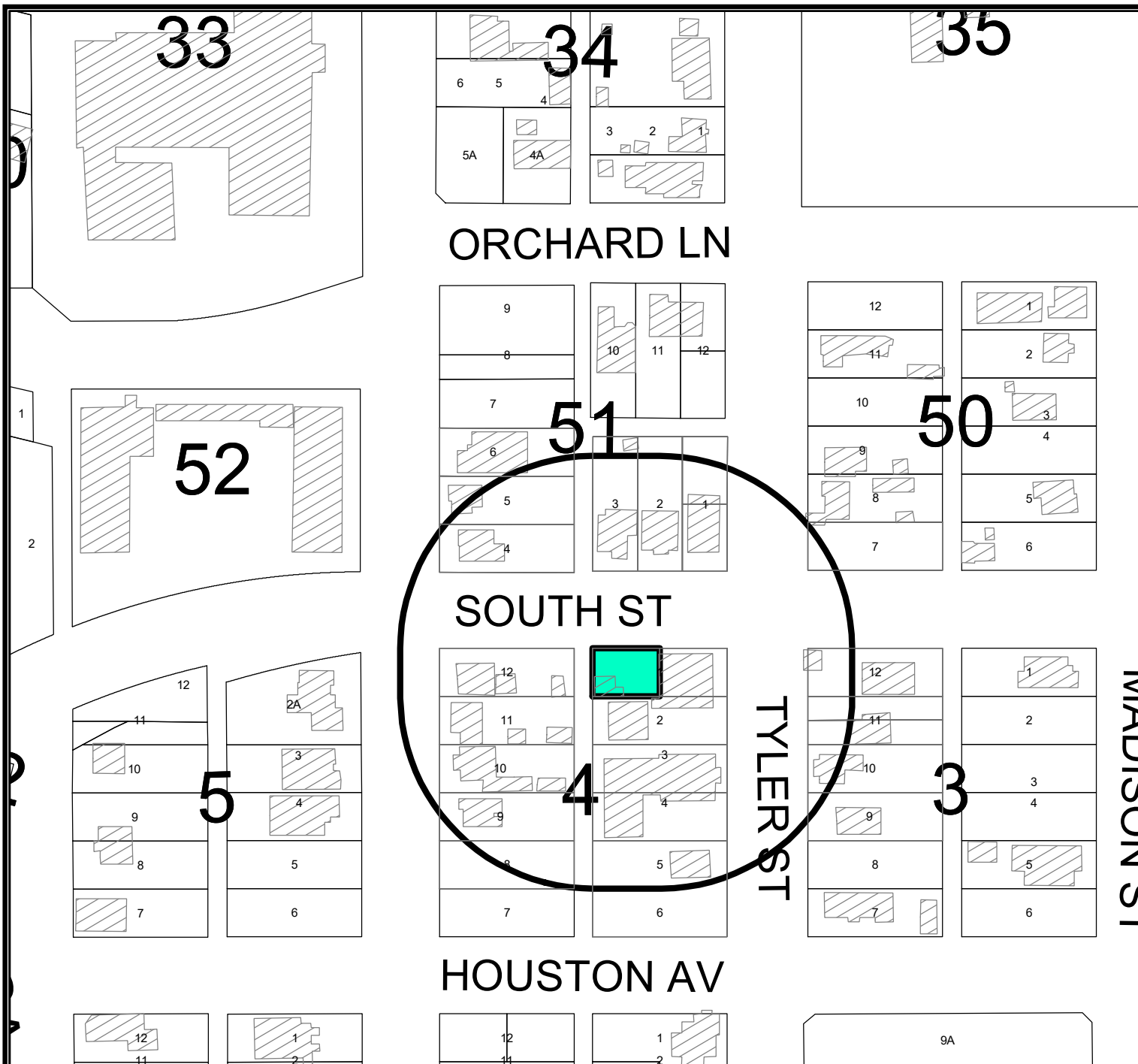
RECEIVED
MAY 15 2020
BY: [Signature]

****Application will not be considered for scheduling until reviewed by a planner.****

PACKET

26.25

October 6, 2020



LOCATION MAP

Z-20-0180

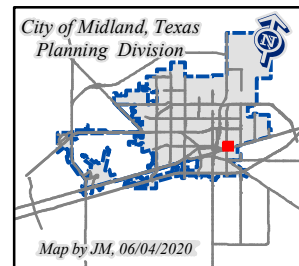
Scale: 1" = 250'

Consider a request by Ramona Ruiz, for a zone change from LI, Light Industrial District to RR, Regional Retail on the west half of Lot 1, Block 4, Moody Addition, City and County of Midland, Texas.

Generally located on the south side of South Street, approximately 50 feet west of North Tyler Street. 26.26
(Council District 2)

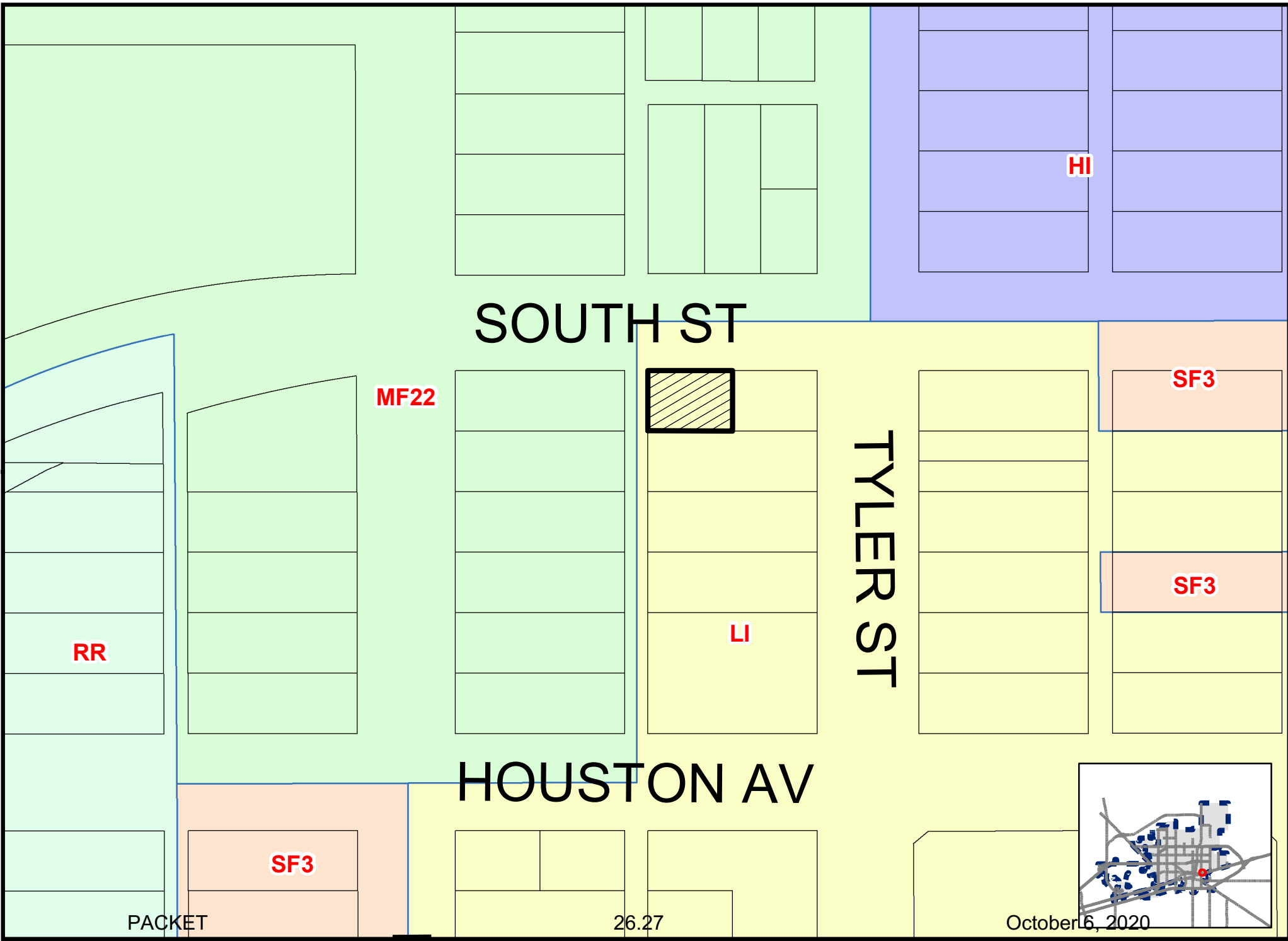
LEGEND

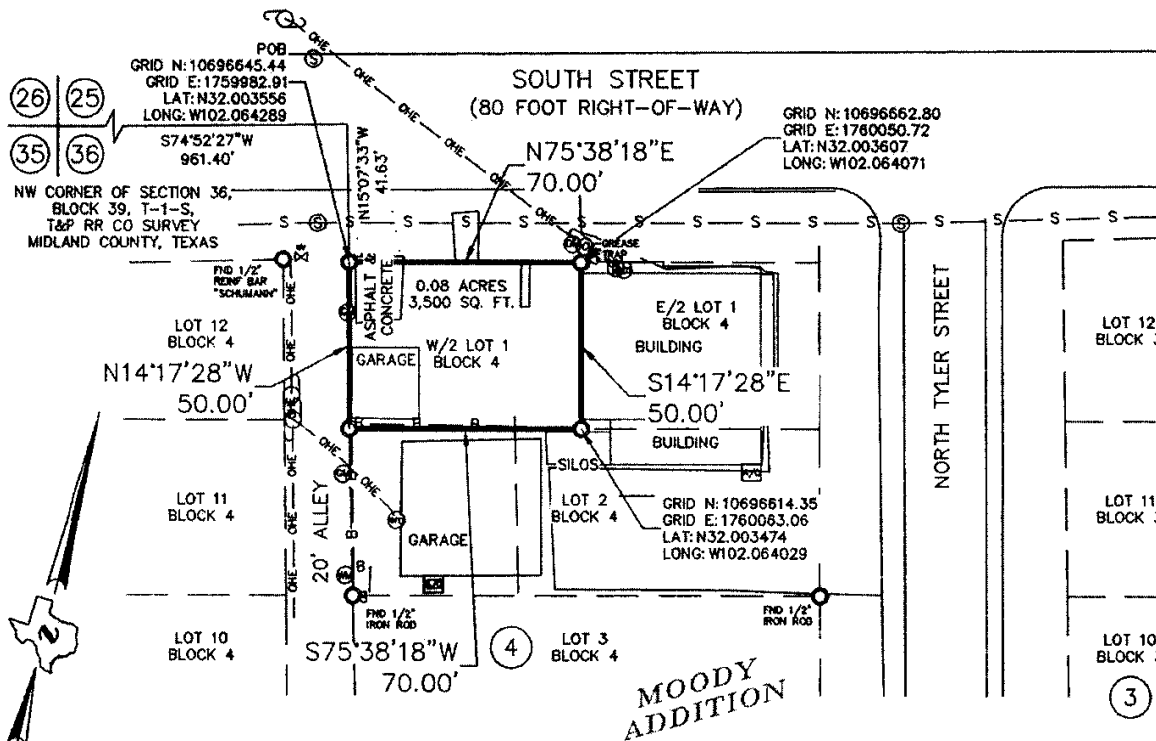
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



October 6, 2020

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR MAP OR IS IT DESIGNED TO BE USED AS A SURVEY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.





LEGEND:

— S —	SEWER LINE
— B —	BRICK FENCE
— O —	OVERHEAD ELECTRIC
⊙	UTILITY POLE
⊙	ELECTRIC METER
⊙	AIR CONDITIONER
⊙	GAS METER
⊙	CLEAN OUT
⊙	WATER METER
⊙	WATER VALVE
⊙	SANITARY SEWER MANHOLE
⊙	MONUMENT AS DESCRIBED

FIELD NOTE DESCRIPTION OF THE SURVEY
KNOWN AS WEST 1/2 LOT 1, BLOCK 4
OF SECTION 36, BLOCK 39, T-1-S, T-1
SAID 0.08 ACRE TRACT DESCRIBED MC
FOLLOWS:

BEGINNING AT A 1/2" REINFORCING BAR SET
FROM WHICH THE NORTHWEST CORNER
WEST 41.63 FEET, AND SOUTH 74°52'2"
THENCE NORTH 75°38'18" EAST 70.00
NORTHEAST CORNER OF THIS TRACT;
THENCE SOUTH 14°17'28" EAST 50.00
SOUTHEAST CORNER OF THIS TRACT;
THENCE SOUTH 75°38'18" WEST 70.00
SOUTHWEST CORNER OF THIS TRACT;
THENCE NORTH 14°17'28" WEST 50.00

NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
THIS SURVEY WAS PREPARED WITH BENEFIT OF TITLE COMMITMENT OF NO. 306400 EFFECTIVE DATE FEBRUARY 28, 2020 ISSUED BY FIRST AMERICAN TITLE GUARANTEE COMPANY.

ORDINANCE NO. 3022 BLANKET RIGHT OF WAY LICENSE EXECUTED BY THE CITY OF MIDLAND TO WESTERN GAS RESOURCES, INC., DATED SEPTEMBER 11, 2001, AND RECORDED IN VOLUME 1910, PAGE 176, OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS.

COVERING EASTOVER ADDITION AND MOODY ADDITION, VACATING AND ABANDONING OF SAID PORTION OF NORTH ADAMS STREET AND THE MOOREN OF A PORTION OF EAST TEXAS AVENUE AND THE EXTENSION OF JESSE STREET AND SUBJECT TO EXISTING EASEMENTS IN SAID STREETS, EXECUTED BY THE CITY OF MIDLAND, TEXAS, TO THE PUBLIC DATED MAY 28, 1959, AND RECORDED IN VOLUME 284, PAGE 336, DEED RECORDS OF MIDLAND COUNTY, TEXAS.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

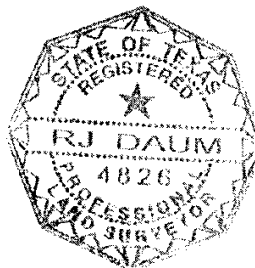
Surveyor Certification

TO THE LIENHOLDERS, RAMONA L. RUIZ

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER:
THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE
GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON
AND THAT THERE ARE NO KNOWN DISCREPANCIES,
CONFLICTS, SHORTAGES IN AREA, BOUNDARY
LINE CONFLICTS, ENCROACHMENTS,
OVERLAPPING OF IMPROVEMENTS,
EASEMENTS OR RIGHTS-OF-WAY,
EXCEPT AS SHOWN HEREON.

DATED THIS 20TH DAY OF MARCH, 2020

RJ DAUM
TEXAS RPLS 4826



SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY

CIVIL ENGINEERING - LAND SURVEYING
TEXAS FIRM No. F1880 - TEXAS FIRM No. 10149500

800 N. MARSHFIELD STREET
SUITE 100
MIDLAND, TEXAS 79701

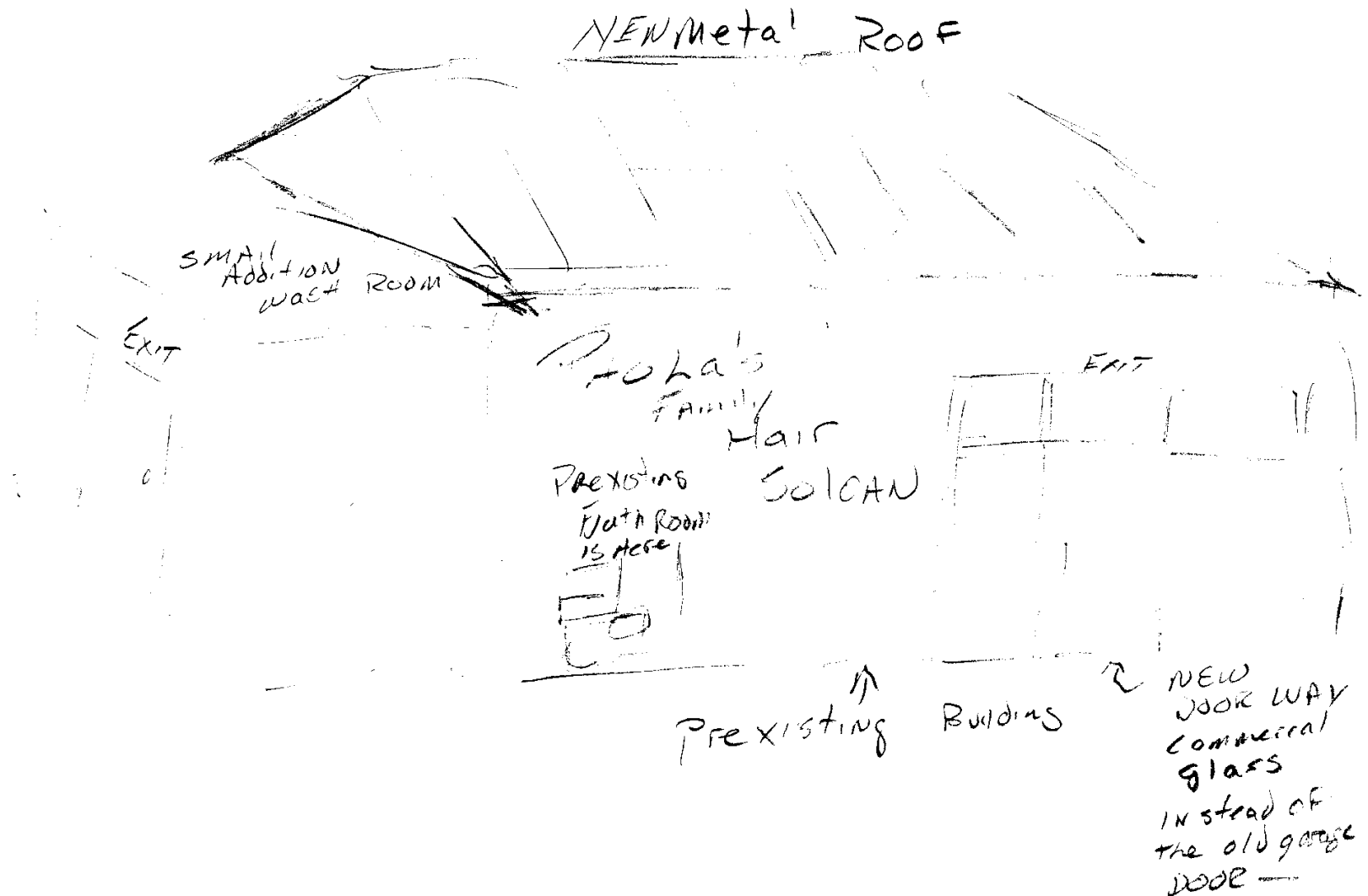
Office (432) 684-5548

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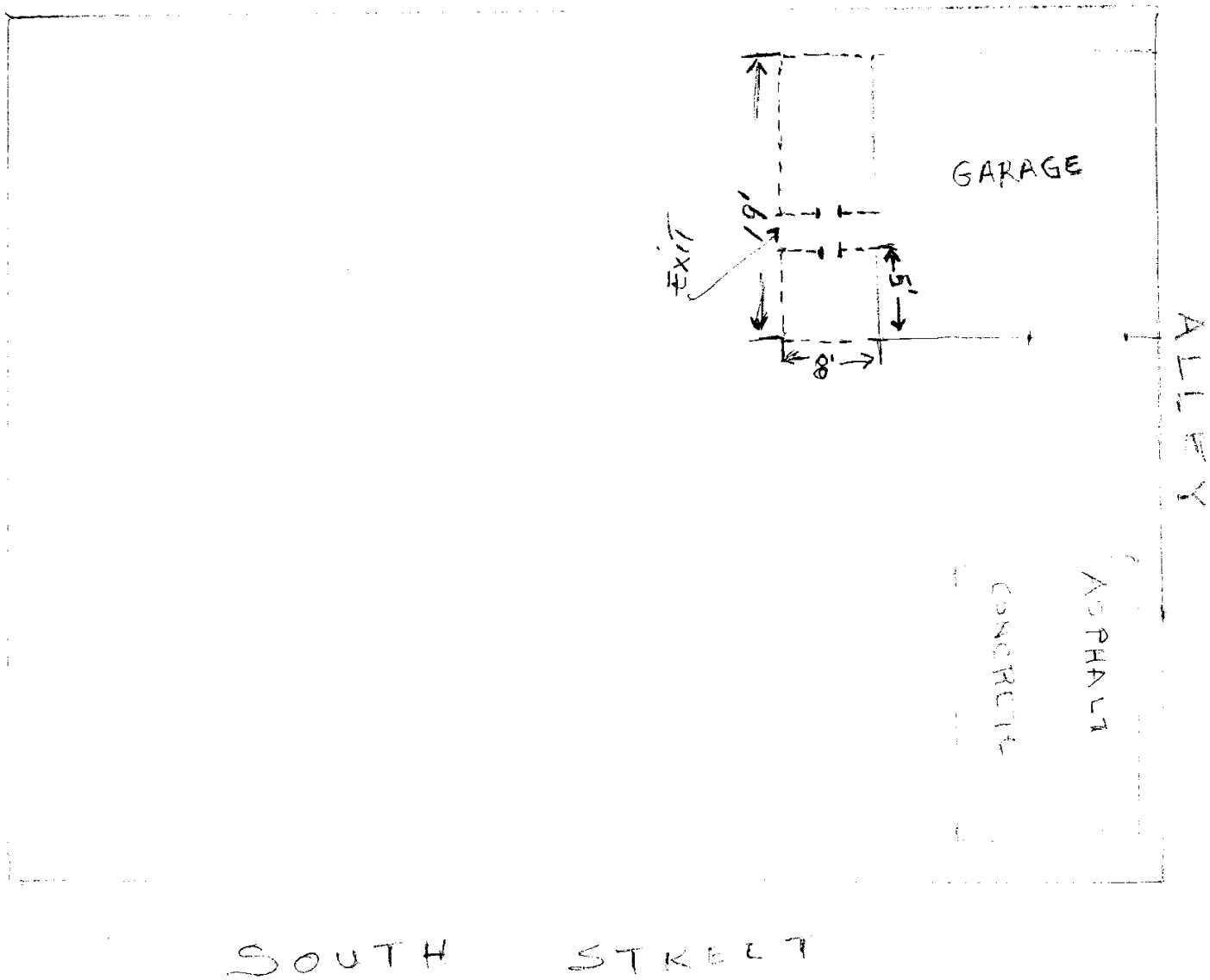
SCALE: 1" = 50' re

THIS IS A DRAFT OF WHAT I WILL PUT IN
PLACE



685 7006

(432)













City Council Agenda

MEETING DATE: October 6, 2020

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Coordinator

SUBJECT: The proposed granting of oil and gas well permits to Diamondback E&P LLC for the drilling of the following oil and gas wells: Missoula Unit 806LS; Missoula Unit 817MS; Butte Unit 805LS; and Butte Unit 816MS; said wells being generally located 409 feet north of Green Tree Blvd. extension and between 2,062 feet and 2,122 feet west of North Midkiff Road extension. District 1

Purpose:

Diamondback E&P LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval noting an update of one exhibit. Diamondback E&P will be using at a minimum 24 ft. tall sound walls on the southerly side of the well pad during completion operations (frac and drillout). Sound walls may also be erected on the westerly side if needed. Diamondback E&P does have a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Diamondback E&P is requesting the following variances:

1. Requesting a variance for trees of 2"-3" in diameter due to having a greater survival rate over a five-year period and have a growth rate greater than the 4" diameter requirements.
2. Requesting a variance to have perimeter fence around the four well pad site and the ability to remove either fence around pad site if and when the construction of greater perimeter is deemed and replace fence meeting the requirement of the applicable ordinance.
3. Requesting a variance to a larger reserve pit being 445 ft. X 227 ft. for the drilling of four separate wells on drilling pad which will result in a smaller footprint to the surface versus four separate reserve pits.
4. Requesting a variance to the pit closure requirement with the option to use a green bio technology treatment which will result in a low percentage of hydrocarbons in soil in an environmentally friendly state.
5. Requesting a variance to the hours of operation for fracture stimulations and to allow for frac operations to occur during a 24-hour period which will include the use of lights during such operations.

Attachments: Applications, Location maps, Exhibit - Drill site maps, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 7/27/2020	Operator Name (must match W-1) DIAMONDBACK E&P LLC	Operator Address 500 W. TEXAS AVE., STE 1200 MIDLAND, TX 79701
Representative Name PAULA BRUNSON Regulatory Advisor	Representative Address (within Midland City Limits) 500 W. Texas Ave., Ste 1200 Midland, TX 79701	Rep. Tele. 432-221-7442 Rep. Fax
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Joel Martin, Production Manager 24/7 Answering Services - No. 1 (Tele.): 432-699-9332 No. 2 (Tele.): 432-238-9969 Option B: Joel Martin 500 W. Texas Ave., Ste 1200 432-238-9969 Midland, TX 79701 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): (Same as above)		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. See attached.		
2.		
3.		
ATTACHED AS EXHIBIT C is a Take-off from Amanda Gray, a Certified Petroleum Landman, indicating that Diamondback E&P LLC has a legal right to develop the mineral estate that is the subject of this Application. [See J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Farming and pasture.		
ATTACHED AS EXHIBIT D is a Current Tax Roll from Midland Central Appraisal District which lists the names and addresses of all surface owners within 860 feet of the surface well location. [See J(7)].		
PACKET	27.3	October 6, 2020

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: BUTTE UNIT 805LS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit W.

Legal Description of Proposed Well Site:

SHL: 2102' FEL & 309' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719

BHL: 2276' FEL & 2592' FNL, T&P RR Co Svy, Blk 39, T-1-S, Sec. 17, A-37

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Existing water wells location in Section 8, Blk 39, T&P RR Co Svy will be used. Other nearby wells will be used if needed. Trucking will also be used if needed.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certification. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

ATTACHED AS EXHIBIT V is Applicant's request for a variance to the hours of fracing operations.

Diamondback E&P LLC

[NAME OF COMPANY]

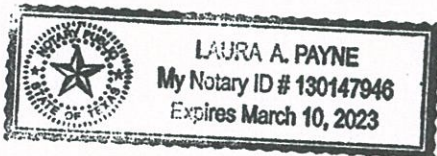
By Paula Brunson

Its Regulatory Advisor

State of Texas)

County of Midland)

Paula Brunson, Regulatory Advisor, personally appeared before me, and being first duly sworn, declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[Seal]

Laura Payne
Notary Public, State of Texas

Attachment to Application for Oil and Gas Permit

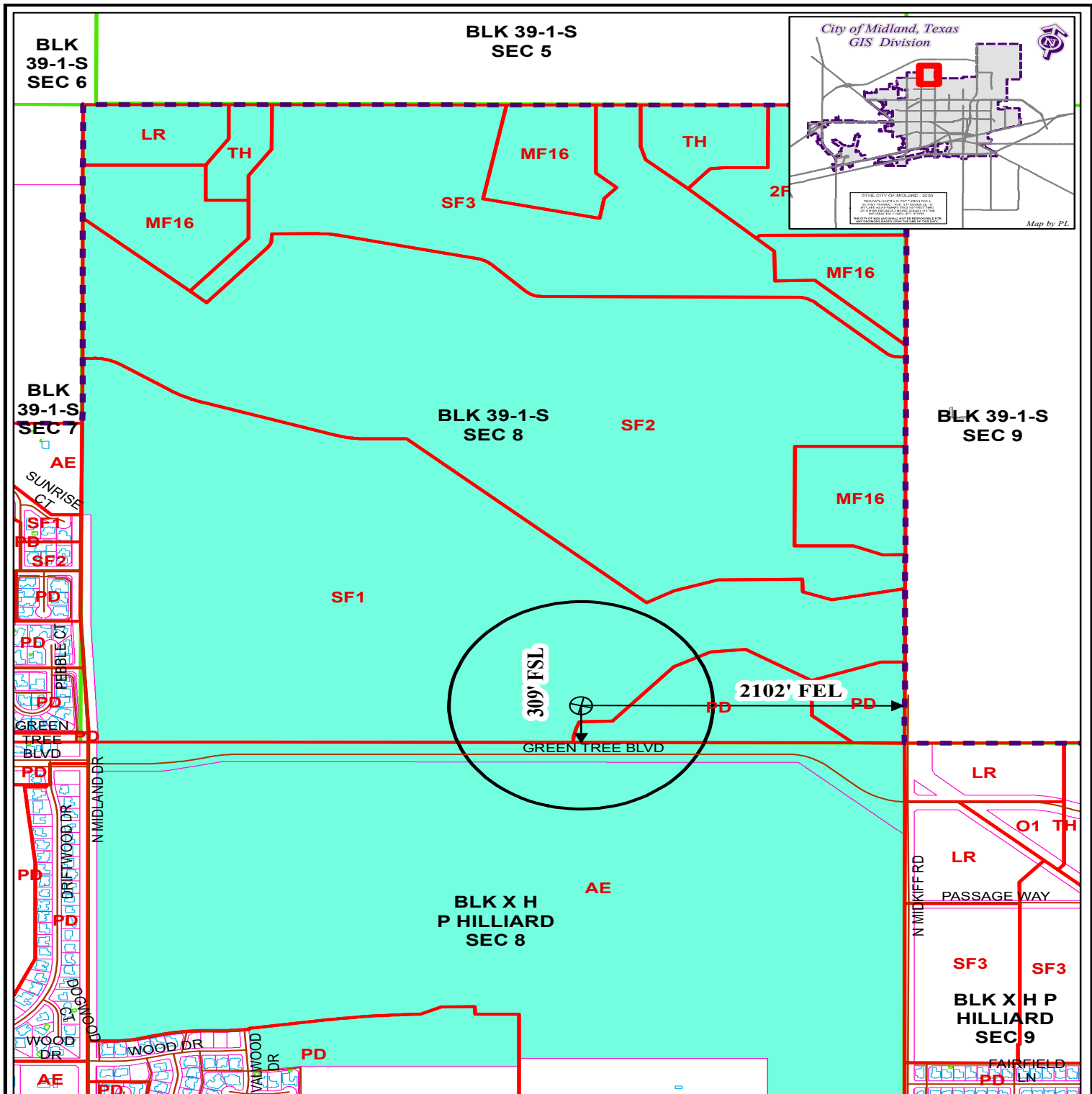
II. Mineral Ownership Butte Unit

Names and Addresses of Mineral Estate Lessors (under applicable lease):

Anguish Partnership P.O. Box 63 Midland, TX 79702	Christine Barnes Mallams, a.k.a. Christine Motycka P.O. Box 505 Midland, TX 79702
Evans Resources, L.P. 3502 Mockingbird Ln Midland, TX 79707	D&J Anguish Properties, Ltd. 33819 Conroe Huffsmith Road Magnolia, TX 77354-5011
D. Wynn Ent., LLC 825 Good Springs Loop Willison, TN 38076	Anguish Interests, LLC 350 C.R. 2664 Eureka Springs, AR 72631
Brigham Minerals 5914 W. Courtyard Dr. Bridgepoint Plaza II, Ste. 200 Austin, TX 78730	SBN 2015 Map 5410 Bees Caves Rd. Austin, TX 78746
Clay Young Smith 56 Champions Run San Antonio, TX 78258	Jauer Energy, LLC 25716 Creekside Cove Boerne, TX 78006
David Eric Ash 310 Berkeley Oak Shavano Park, TX 78230	Buckhorn Minerals II, LLP 1800 Bering Dr, STE 1075 Houston, TX 77057
Alva Energy, LLC P.O. Box 10151 Midland, TX 79702	Sidewell Oil & Gas, Inc. P.O. Box 9298 Amarillo, TX 79105
Santa Elena Minerals, LP P.O. Box 2063 Midland, TX 79702	Texas Redhand, LLC P.O. Box 2840 Midland, TX 79702
Simone Huys O'Neill, LLC 10800 E Cactus Rd Unit 13 Scottsdale, AZ 85259	RRIG Energy, LLC P.O. Box 471192 Fort Worth, TX 76147
Powers Acquisitions, LLC P.O. Box 470972 Fort Worth, TX 76147	RRIG Permian I, LLC P.O. Box 471195 Fort Worth, TX 76147
Stone Liquidating c/o Bessemer trust Company, N.A. 109 N. Post Oak Lane, Ste. 205 Houston, TX 77024	Carolyn J. Davis 3946 Freshwind Circle Westlake Village, CA 91361
Primitive Petroleum 4514 Robin Lane Midland, TX 79707	Aspen Grove Royalty Company, LLC P.O. Box 10588 Midland, TX 79701

Barbara Hilseweck Wong, Trustee of The Barbara Hilseweck Wong Trust P.O. Box 12749 Dallas, TX 75225	Bob W. Dutton and wife, Lettie A. Dutton 3801 Crestridge Dr. Midland, TX 79707
Byrd McNeil Ball and Alice Hilseweck Ball, Trustees of The Ball Family Trust P.O. Box 12749 Dallas, TX 75225	Jake Kelley and wife, Megan Kelley 3804 Crestridge Dr. Midland, TX 79707
Donald W. Turner and Barara Theresa Turner Co-Trustees of the Ball Family Trust 4514 Tutbury Court Amarillo, TX 79119	Elaine Barnes P.O. Box 505 Midland, TX 79702
Gloria R.A. Evans Ltd. P.O. Box 7962 Midland TX 79708	GrayRock Minerals, LLC 5950 Cedar Springs Rd Dallas, TX 75235
Helen O. Schwab 410 West Ohio Ave. Midland, TX 79701	Hilseweck Partnership P.O. Box 12749 Dallas, TX 75225
John R. Michener and/or John M. Michener, JTWROS 1908 Midcress Plano TX 75075	Jordan Oliver and Jennifer Oliver 3809 Crestridge Dr. Midland, TX 79707
Julie Barnes and Christine Motycka, Co-Trustees of the Laurie B. Barr Family Trust Wells Fargo Bank, N.A, Agent for the Laurie Barr Family Trust P.O. Box 1959 Midland, TX 79702	Julie Ellen Barnes P.O. Box 505 Midland, TX 79702
Mary Jane Lackey, as Trustee of the Trust Agreement of Mary Jane Lackey, dated November 20, 1998 1601 Ramona Drive Enid, OK 73703	Kevin Kingsland Conklin and wife, Terrie Lynn Conklin 3800 Crestridge Dr. Midland, TX 79707
Mary Turner P.O. Box 85 Mize, MS 39116	McAfee Enterprises, L.P. Attn: Mark Williams P.O. Box 1087 Norman, OK 73070
Michael T. O'Neill 410 West Ohio Ave. Midland, TX 79701	Warren G. Cate, a widower 3803 Crestridge Dr. Midland, TX 79707
Mid Continental Exploration, Inc. P.O. Box 699 Sanger, TX 76266	Warwick Associates, L.C. P.O. Box 18405 Oklahoma City, OK 73154
Orman J. Hubbard, Jr. P.O. Box 512 Midland, TX 79702	W. Carr Vincent 28 Springhill Road Des Moines, NM 88418
Perla Mojica, a single person 3808 Crestridge Drive Midland, TX 79707	The City of Midland 300 N. Loraine Midland, TX 79701

Steven C. Barnes P.O. Box 505 Midland, TX 79703	Raymond C. Irving and wife, Joyce C. Irving 3806 Crestridge Dr. Midland, TX 79707
Terri Ann Williams, Trustee of Trust C 1100 S. Pickard Norman, OK 73069	Viper Energy Partners 500 W. Texas Ave, Ste. 1200 Midland, TX 79701
Terry W. Rice 3805 Crestridge Dr. Midland, TX 79707	Timothy C. Reece 3802 Crestridge Dr. Midland, TX 79707
William Hapgood Howard P.O. Box 30172 Midland, TX 79706	Lauren Howard Strubar 401 Ranch Road 620 N Ste B Lakeway, TX 78734
Susan Howard Strickland 1604 Ventura Dr. Midland, TX 79705	Randy Howard McPherson 4710 E. Loop 250 N. Midland, TX 79705
Estate of Dessie Bond McCarroll 5237 Juliandra Ave El Paso, TX 79924	



LOCATION AND ZONING MAP

Oil - 027366 - 2020

Scale: 1" = 900'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 309' FSL and 2,102' FEL, Section 8, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 409 feet north of Green Tree Blvd. extension and 2,102 feet west of North Midkiff Road extension.

PACKET

Butte Unit 805LS

LEGEND

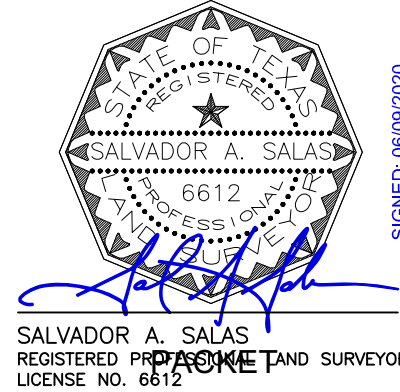
	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	O3	OFFICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	CI, C2, C3	COMMERCIAL
MH	MOBILE HOME DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		

October 6, 2020

PLOT DATE: 06/09/20 1:29 PM



SIGNED: 06/09/2020

LNV
engineers | architects | surveyors
801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408
WWW.LNVINC.COM

TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500
PH. (361) 883-1984
FAX (361) 883-1986

SITUATED IN THE 100' RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 30 NORTH, RANGE 12 WEST, MIDLAND COUNTY, TEXAS. APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

EXHIBIT 'E'

PETROPLEX
ENERGY INC.

OCCIDENTAL
PERMIAN LTD.

T&P RR. CO.
A-80
SEC. 9
BLK. 39
T-1-S

H. P. HILLIARD
A-1275
SEC. 9
BLK. X

PARSLEY ENERGY
OPERATIONS LLC

H. P. HILLIARD

A-17
SEC. 8
BLK. X

200 0 200 400
SCALE: 1" = 400 FEET

LEGEND	
---	SURVEY LINE
- - -	EXISTING PIPELINE
FL	EXISTING FLOWLINE
DHE	EXISTING OVERHEAD ELECTRIC LINE
X	EXISTING FENCE LINE
---	EXISTING UNDERGROUND ELECTRIC LINE
---	MIDLAND CITY LIMITS
---	EXISTING CALICHE ROAD
⊙	EXISTING POWER POLE
↓	EXISTING GUY ANCHOR

- NOTES:
- COORDINATES SHOWN ARE BASED ON NAD27 TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE.
 - THIS PLAT DOES NOT, IN ANYWAY REPRESENT A "BOUNDARY SURVEY," AND DOES NOT COMPLY WITH THE CURRENT T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEY.

BUTTE UNIT 805LS
NAVD88
SURFACE HOLE LOCATION
GND. ELEV. = 2,815.7'
NAD83 TX-C
Y = 10,717,975
X = 1,735,208
LAT. = 32°03'39.92" N
LONG. = 102°08'43.14" W
NAD27 TX-C
LAT. = 32°03'39.49" N
LONG. = 102°08'41.63" W

T&P RR CO.
A-719
SEC. 8
BLK. 39
T-1-S

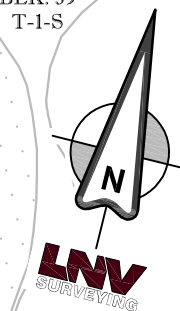
WESTERN T
CORPORATION

EVANS I LTD

DIAMONDBACK
E&P LLC

EVANS
A2 SHL

EXISTING FRAC POND
ZONE AE
REGULATORY
FLOODWAY
EXISTING PIPELINE EASEMENT



MIDLAND CITY LIMITS
& SURVEY LINE

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100' PIPELINE EASEMENT (VOL. 132, PG. 100)

500' BUFFER LINE

800' BUFFER LINE

GREENTREE BLVD.
(160' WIDE R.O.W.)

SURVEY LINE

500' BUFFER LINE

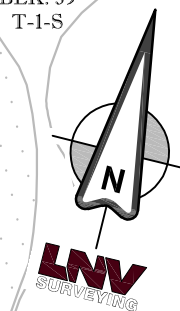
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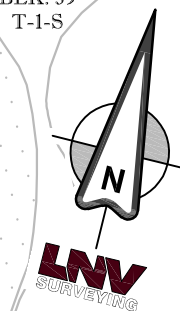
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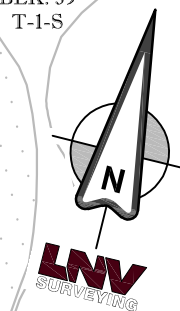
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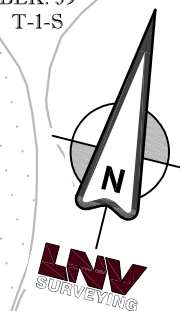
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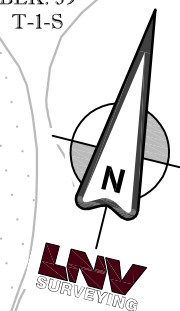
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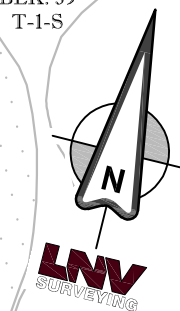
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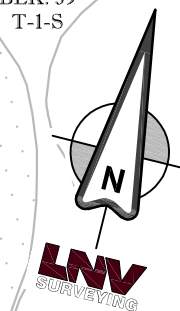
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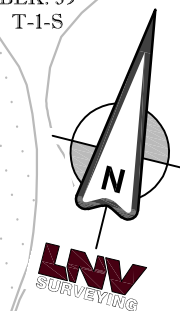
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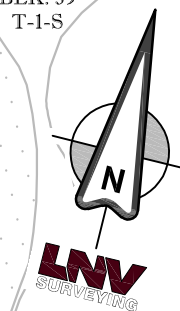
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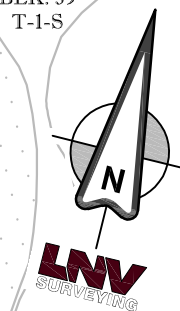
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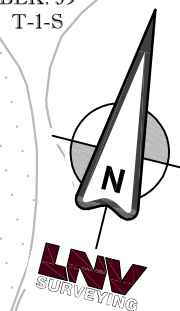
WESTERN T
CORPORATION

EVANS I LTD

DIAMONDBACK
E&P LLC

EVANS
A2 SHL

EXISTING FRAC POND
ZONE AE
REGULATORY
FLOODWAY
EXISTING PIPELINE EASEMENT



MIDLAND CITY LIMITS
& SURVEY LINE

MIDLAND CITY LIMITS
SURVEY LINE

MIDLAND CITY LIMITS
SURVEY LINE

100' PIPELINE EASEMENT (VOL. 132, PG. 100)

500' BUFFER LINE

800' BUFFER LINE

GREENTREE BLVD.
(160' WIDE R.O.W.)

SURVEY LINE

500' BUFFER LINE

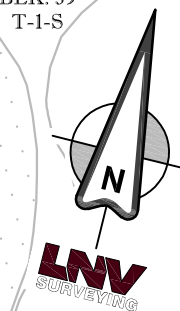
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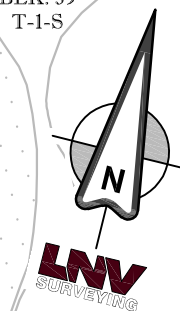
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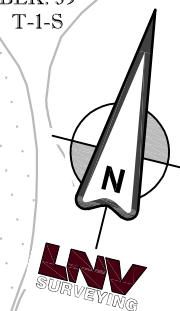
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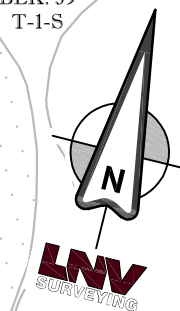
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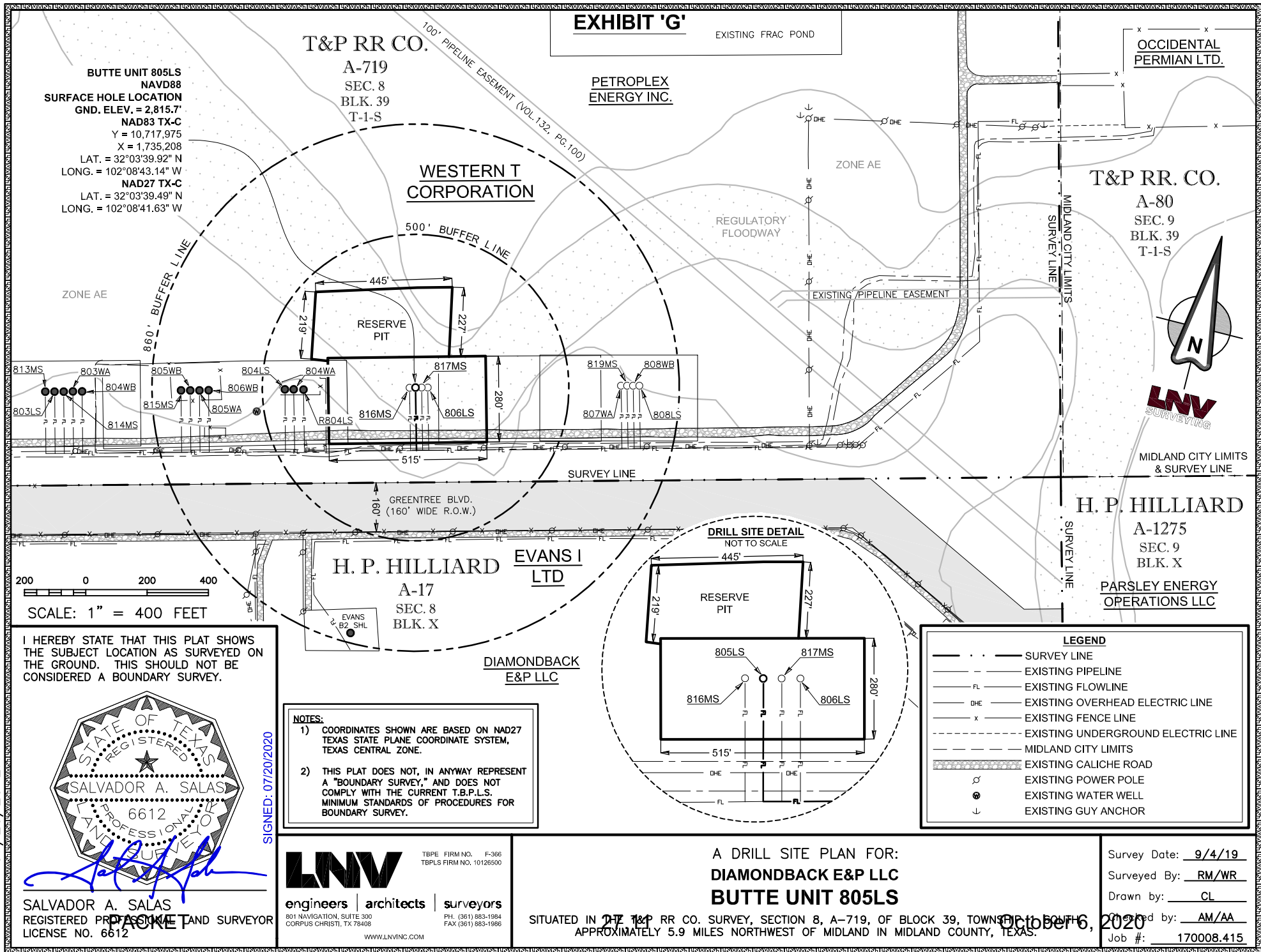
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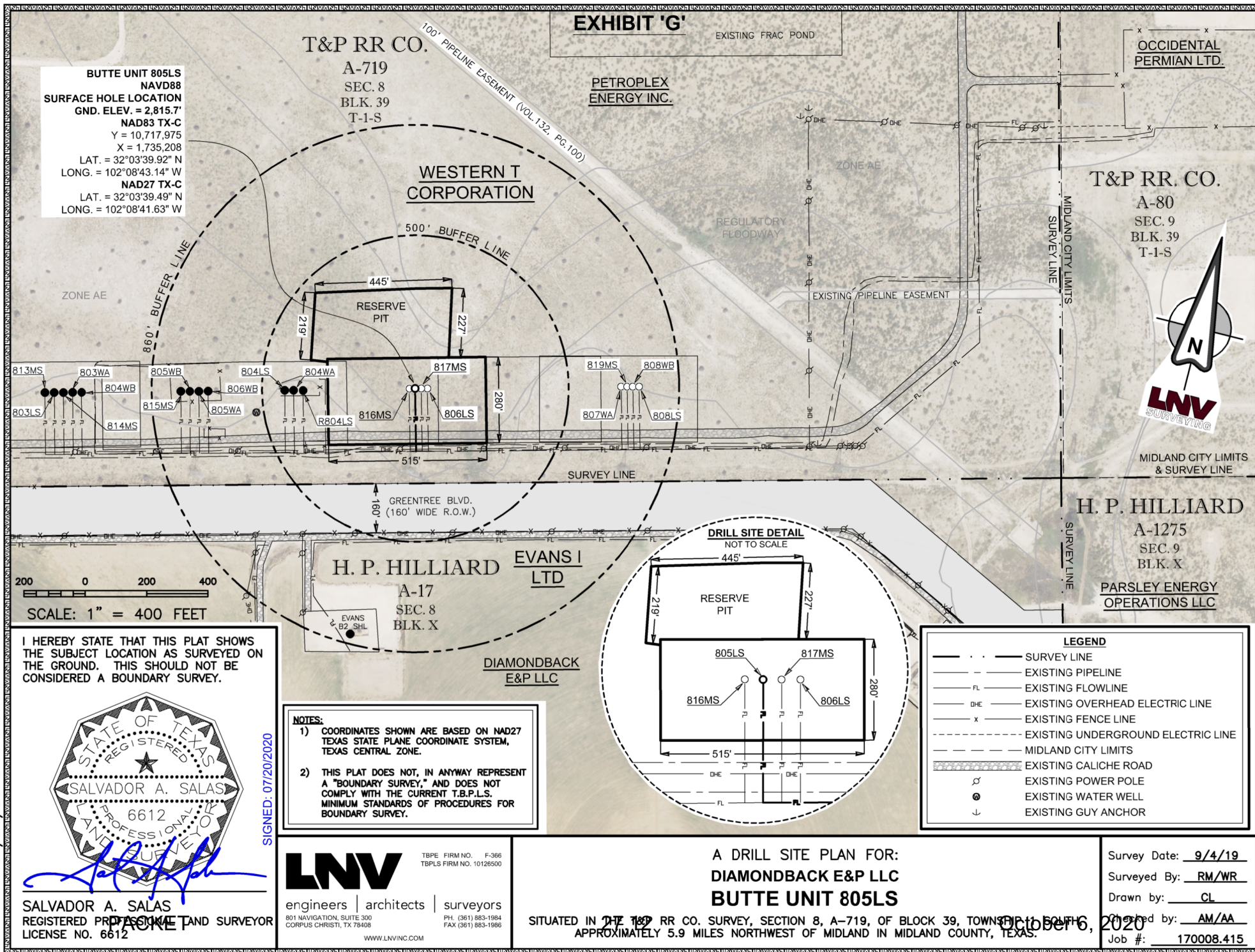
GREENTREE BLVD.
(160' WIDE R.O.W.)

SURVEY LINE

PLOT DATE: 07/20/20 2:17 PM



PLOT DATE: 07/20/20 2:10 PM





APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 7/27/2020	Operator Name (must match W-1) DIAMONDBACK E&P LLC	Operator Address 500 W. TEXAS AVE., STE 1200 MIDLAND, TX 79701
Representative Name PAULA BRUNSON Regulatory Advisor	Representative Address (within Midland City Limits) 500 W. Texas Ave., Ste 1200 Midland, TX 79701	Rep. Tele. 432-221-7442 Rep. Fax
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Joel Martin, Production Manager 24/7 Answering Services - No. 1 (Tele.): 432-699-9332 No. 2 (Tele.): 432-238-9969 Option B: Joel Martin 500 W. Texas Ave., Ste 1200 432-238-9969 Midland, TX 79701 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): (Same as above)		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. See attached.		
2.		
3.		
ATTACHED AS EXHIBIT C is a Take-off from Amanda Gray, a Certified Petroleum Landman, indicating that Diamondback E&P LLC has a legal right to develop the mineral estate that is the subject of this Application. [See J(5)].		
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General Description of Current Surface Use (within 860 feet of proposed surface location):		
Farming and pasture.		
ATTACHED AS EXHIBIT D is a Current Tax Roll from Midland Central Appraisal District which lists the names and addresses of all surface owners within 860 feet of the surface well location. [See J(7)].		
PACKET	27.13	October 6, 2020

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ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: BUTTE UNIT 816MS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit W

Legal Description of Proposed Well Site:

SHL: 2122' FEL & 309' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719

BHL: 2351' FEL & 2592' FNL, T&P RR Co Svy, Blk 39, T-1-S, Sec. 17, A-37

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ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

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Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certification. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

ATTACHED AS EXHIBIT V is Applicant's request for a variance to the hours of fracing operations.

Diamondback E&P LLC

[NAME OF COMPANY]

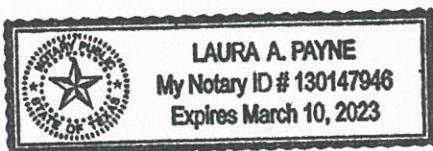
By Paula Brunson

Its Regulatory Advisor

State of Texas)

County of Midland)

Paula Brunson, Regulatory Advisor, personally appeared before me, and being first duly sworn, declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[Seal]

Laura Payne
Notary Public, State of Texas

Attachment to Application for Oil and Gas Permit

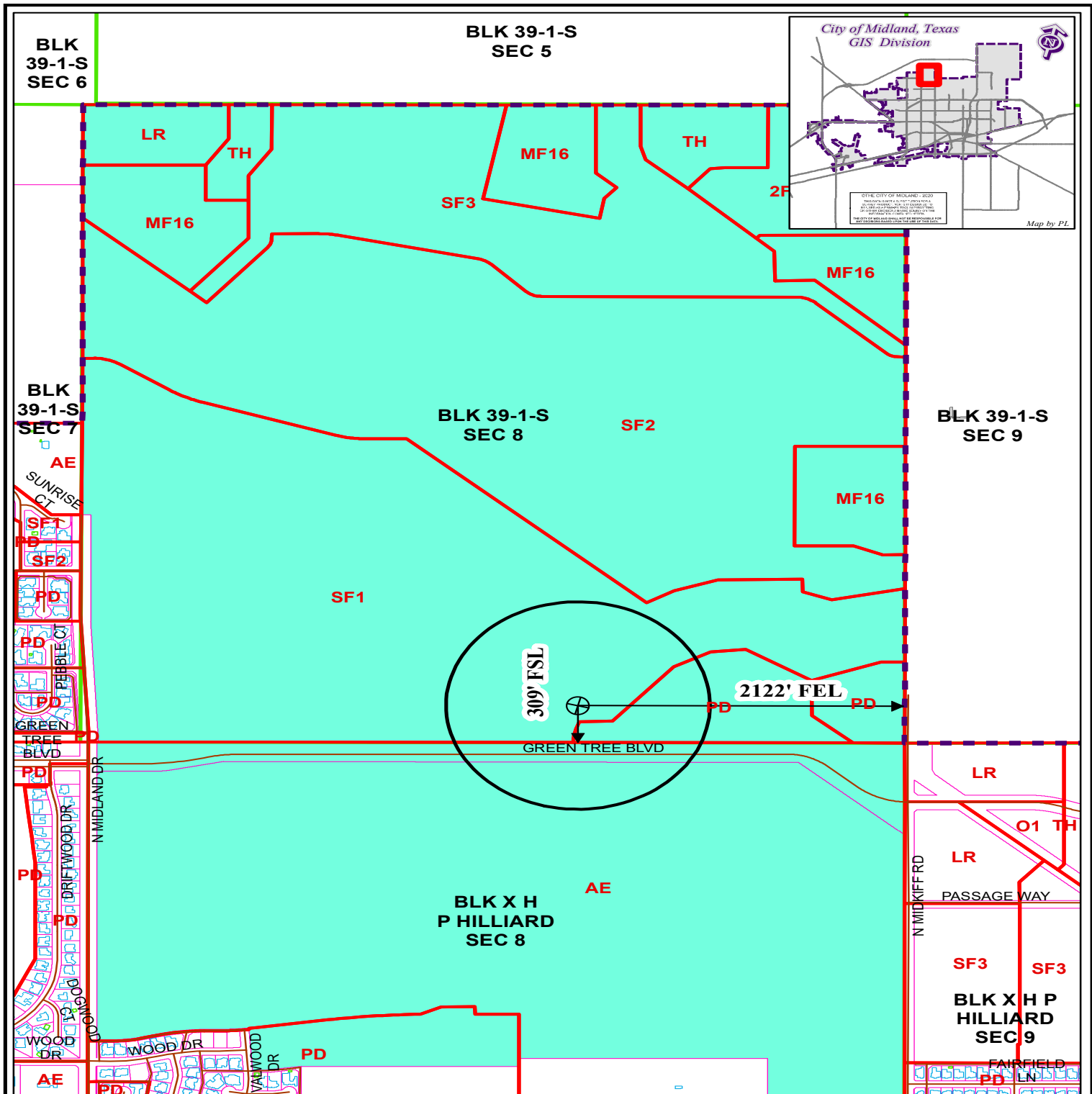
II. Mineral Ownership Butte Unit

Names and Addresses of Mineral Estate Lessors (under applicable lease):

Anguish Partnership P.O. Box 63 Midland, TX 79702	Christine Barnes Mallams, a.k.a. Christine Motycka P.O. Box 505 Midland, TX 79702
Evans Resources, L.P. 3502 Mockingbird Ln Midland, TX 79707	D&J Anguish Properties, Ltd. 33819 Conroe Huffsmith Road Magnolia, TX 77354-5011
D. Wynn Ent., LLC 825 Good Springs Loop Willison, TN 38076	Anguish Interests, LLC 350 C.R. 2664 Eureka Springs, AR 72631
Brigham Minerals 5914 W. Courtyard Dr. Bridgepoint Plaza II, Ste. 200 Austin, TX 78730	SBN 2015 Map 5410 Bees Caves Rd. Austin, TX 78746
Clay Young Smith 56 Champions Run San Antonio, TX 78258	Jauer Energy, LLC 25716 Creekside Cove Boerne, TX 78006
David Eric Ash 310 Berkeley Oak Shavano Park, TX 78230	Buckhorn Minerals II, LLP 1800 Bering Dr, STE 1075 Houston, TX 77057
Alva Energy, LLC P.O. Box 10151 Midland, TX 79702	Sidewell Oil & Gas, Inc. P.O. Box 9298 Amarillo, TX 79105
Santa Elena Minerals, LP P.O. Box 2063 Midland, TX 79702	Texas Redhand, LLC P.O. Box 2840 Midland, TX 79702
Simone Huys O'Neill, LLC 10800 E Cactus Rd Unit 13 Scottsdale, AZ 85259	RRIG Energy, LLC P.O. Box 471192 Fort Worth, TX 76147
Powers Acquisitions, LLC P.O. Box 470972 Fort Worth, TX 76147	RRIG Permian I, LLC P.O. Box 471195 Fort Worth, TX 76147
Stone Liquidating c/o Bessemer trust Company, N.A. 109 N. Post Oak Lane, Ste. 205 Houston, TX 77024	Carolyn J. Davis 3946 Freshwind Circle Westlake Village, CA 91361
Primitive Petroleum 4514 Robin Lane Midland, TX 79707	Aspen Grove Royalty Company, LLC P.O. Box 10588 Midland, TX 79701

Barbara Hilseweck Wong, Trustee of The Barbara Hilseweck Wong Trust P.O. Box 12749 Dallas, TX 75225	Bob W. Dutton and wife, Lettie A. Dutton 3801 Crestridge Dr. Midland, TX 79707
Byrd McNeil Ball and Alice Hilseweck Ball, Trustees of The Ball Family Trust P.O. Box 12749 Dallas, TX 75225	Jake Kelley and wife, Megan Kelley 3804 Crestridge Dr. Midland, TX 79707
Donald W. Turner and Barara Theresa Turner Co-Trustees of the Ball Family Trust 4514 Tutbury Court Amarillo, TX 79119	Elaine Barnes P.O. Box 505 Midland, TX 79702
Gloria R.A. Evans Ltd. P.O. Box 7962 Midland TX 79708	GrayRock Minerals, LLC 5950 Cedar Springs Rd Dallas, TX 75235
Helen O. Schwab 410 West Ohio Ave. Midland, TX 79701	Hilseweck Partnership P.O. Box 12749 Dallas, TX 75225
John R. Michener and/or John M. Michener, JTWROS 1908 Midcress Plano TX 75075	Jordan Oliver and Jennifer Oliver 3809 Crestridge Dr. Midland, TX 79707
Julie Barnes and Christine Motycka, Co-Trustees of the Laurie B. Barr Family Trust Wells Fargo Bank, N.A, Agent for the Laurie Barr Family Trust P.O. Box 1959 Midland, TX 79702	Julie Ellen Barnes P.O. Box 505 Midland, TX 79702
Mary Jane Lackey, as Trustee of the Trust Agreement of Mary Jane Lackey, dated November 20, 1998 1601 Ramona Drive Enid, OK 73703	Kevin Kingsland Conklin and wife, Terrie Lynn Conklin 3800 Crestridge Dr. Midland, TX 79707
Mary Turner P.O. Box 85 Mize, MS 39116	McAfee Enterprises, L.P. Attn: Mark Williams P.O. Box 1087 Norman, OK 73070
Michael T. O'Neill 410 West Ohio Ave. Midland, TX 79701	Warren G. Cate, a widower 3803 Crestridge Dr. Midland, TX 79707
Mid Continental Exploration, Inc. P.O. Box 699 Sanger, TX 76266	Warwick Associates, L.C. P.O. Box 18405 Oklahoma City, OK 73154
Orman J. Hubbard, Jr. P.O. Box 512 Midland, TX 79702	W. Carr Vincent 28 Springhill Road Des Moines, NM 88418
Perla Mojica, a single person 3808 Crestridge Drive Midland, TX 79707	The City of Midland 300 N. Loraine Midland, TX 79701

Steven C. Barnes P.O. Box 505 Midland, TX 79703	Raymond C. Irving and wife, Joyce C. Irving 3806 Crestridge Dr. Midland, TX 79707
Terri Ann Williams, Trustee of Trust C 1100 S. Pickard Norman, OK 73069	Viper Energy Partners 500 W. Texas Ave, Ste. 1200 Midland, TX 79701
Terry W. Rice 3805 Crestridge Dr. Midland, TX 79707	Timothy C. Reece 3802 Crestridge Dr. Midland, TX 79707
William Hapgood Howard P.O. Box 30172 Midland, TX 79706	Lauren Howard Strubar 401 Ranch Road 620 N Ste B Lakeway, TX 78734
Susan Howard Strickland 1604 Ventura Dr. Midland, TX 79705	Randy Howard McPherson 4710 E. Loop 250 N. Midland, TX 79705
Estate of Dessie Bond McCarroll 5237 Juliandra Ave El Paso, TX 79924	



LOCATION AND ZONING MAP

Oil - 027365 - 2020

Scale: 1" = 900'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 309' FSL and 2,122' FEL, Section 8, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 409 feet north of Green Tree Blvd. extension and 2,122 feet west of North Midkiff Road extension.

PACKET

Butte Unit 816MS

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
C	COUNTRY ESTATE
1F, 2F, 3F	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
O1, O2	OFFICE
CS	COMMUNITY SERVICE
C1, C2, C3	COMMERCIAL
IP, JPI, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

PS	PROFESSIONAL SERVICE
RS	RETAIL
IS	INDUSTRIAL SERVICE
HS	HEAVY SERVICE

October 6, 2020

PLOT DATE: 06/09/20 1:27 PM

EXHIBIT 'E'

EXISTING FRAC POND

OCCIDENTAL
PERMIAN LTD.

BUTTE UNIT 816MS
NAVD88
SURFACE HOLE LOCATION
GND. ELEV. = 2,815.7'
NAD83 TX-C
Y = 10,717,969
X = 1,735,189
LAT. = 32°03'39.87" N
LONG. = 102°08'43.36" W
NAD27 TX-C
LAT. = 32°03'39.44" N
LONG. = 102°08'41.85" W

T&P RR CO.
A-719
SEC. 8
BLK. 39
T-1-S

PETROPLEX
ENERGY INC.

WESTERN T
CORPORATION

T&P RR CO.
A-80
SEC. 9
BLK. 39
T-1-S

H. P. HILLIARD
A-1275
SEC. 9
BLK. X

PARSLEY ENERGY
OPERATIONS LLC

EVANS I LTD

DIAMONDBACK
E&P LLC

H. P. HILLIARD

A-17
SEC. 8
BLK. X

200 0 200 400
SCALE: 1" = 400 FEET

LEGEND

- SURVEY LINE
- - - EXISTING PIPELINE
- FL EXISTING FLOWLINE
- DHE EXISTING OVERHEAD ELECTRIC LINE
- X EXISTING FENCE LINE
- EXISTING UNDERGROUND ELECTRIC LINE
- MIDLAND CITY LIMITS
- EXISTING CALICHE ROAD
- EXISTING POWER POLE
- EXISTING GUY ANCHOR

NOTES:

- COORDINATES SHOWN ARE BASED ON NAD27 TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE.
- THIS PLAT DOES NOT, IN ANYWAY REPRESENT A "BOUNDARY SURVEY," AND DOES NOT COMPLY WITH THE CURRENT T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEY.

SIGNED: 06/09/2020



SALVADOR A. SALAS
REGISTERED PROFESSIONAL SURVEYOR
LICENSE NO. 6612

LNV
engineers | architects | surveyors

801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408

WWW.LNVINC.COM

TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500

PH. (361) 883-1984
FAX (361) 883-1986

A DRILL SITE PLAN FOR:
DIAMONDBACK E&P LLC
BUTTE UNIT 816MS

SITUATED IN T&P RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 1 SOUTH, RANGE 10 WEST, MIDLAND COUNTY, TEXAS.
APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

Survey Date: 9/4/19
Surveyed By: RM/WR
Drawn by: CL
Checked by: AM/AA
Job #: 170008.416



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 7/27/2020	Operator Name (must match W-1) DIAMONDBACK E&P LLC	Operator Address 500 W. TEXAS AVE., STE 1200 MIDLAND, TX 79701
Representative Name PAULA BRUNSON Regulatory Advisor	Representative Address (within Midland City Limits) 500 W. Texas Ave., Ste 1200 Midland, TX 79701	Rep. Tele. 432-221-7442 Rep. Fax
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
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PACKET	27.21	October 6, 2020

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IV. Well & Operations Information

Proposed Well Name: MISSOULA UNIT 806LS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit W.

Legal Description of Proposed Well Site:

SHL: 2062' FEL & 309' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719

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ATTACHED AS EXHIBIT V is Applicant's request for a variance to the hours of fracing operations.

Diamondback E&P LLC

[NAME OF COMPANY]

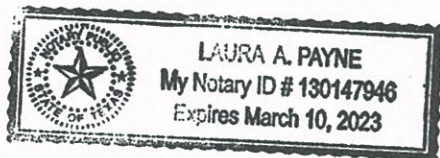
By Paula Brunson

Its Regulatory Advisor

State of Texas)

County of Midland)

Paula Brunson, Regulatory Advisor, personally appeared before me, and being first duly sworn, declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[Seal]

Laura Payne

Notary Public, State of Texas

Attachment to Application for Oil and Gas Permit

II. Mineral Ownership Missoula Unit

Names and Addresses of Mineral Estate Lessors (under applicable lease):

Anguish Partnership P.O. Box 63 Midland, TX 79702	Christine Barnes Mallams, a.k.a. Christine Motycka P.O. Box 505 Midland, TX 79702
Evans Resources, L.P. 3502 Mockingbird Ln Midland, TX 79707	D&J Anguish Properties, Ltd. 33819 Conroe Huffsmith Road Magnolia, TX 77354-5011
D. Wynn Ent., LLC 825 Good Springs Loop Willison, TN 38076	Anguish Interests, LLC 350 C.R. 2664 Eureka Springs, AR 72631
Brigham Minerals 5914 W. Courtyard Dr. Bridgepoint Plaza II, Ste. 200 Austin, TX 78730	SBN 2015 Map 5410 Bees Caves Rd. Austin, TX 78746
Clay Young Smith 56 Champions Run San Antonio, TX 78258	Jauer Energy, LLC 25716 Creekside Cove Boerne, TX 78006
David Eric Ash 310 Berkeley Oak Shavano Park, TX 78230	Buckhorn Minerals II, LLP 1800 Bering Dr, STE 1075 Houston, TX 77057
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Santa Elena Minerals, LP P.O. Box 2063 Midland, TX 79702	Texas Redhand, LLC P.O. Box 2840 Midland, TX 79702
Powers Acquisitions, LLC P.O. Box 470972 Fort Worth, TX 76147	RRIG Energy, LLC P.O. Box 471192 Fort Worth, TX 76147
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Gloria R.A. Evans Ltd. P.O. Box 7962 Midland TX 79708	Aspen Grove Royalty Company, LLC P.O. Box 10588 Midland, TX 79701

Byrd McNeil Ball and Alice Hilseweck Ball, Trustees of The Ball Family Trust P.O. Box 12749 Dallas, TX 75225	Elaine Barnes P.O. Box 505 Midland, TX 79702
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Mary Jane Lackey, as Trustee of the Trust Agreement of Mary Jane Lackey, dated November 20, 1998 1601 Ramona Drive Enid, OK 73703	McAfee Enterprises, L.P. Attn: Mark Williams P.O. Box 1087 Norman, OK 73070
Mary Turner P.O. Box 85 Mize, MS 39116	Warwick Associates, L.C. P.O. Box 18405 Oklahoma City, OK 73154
Mid Continental Exploration, Inc. P.O. Box 699 Sanger, TX 76266	W. Carr Vincent 28 Springhill Road Des Moines, NM 88418
Orman J. Hubbard, Jr. P.O. Box 512 Midland, TX 79702	John Dublin, Jr. 5417 Fruitland Farm Road San Angelo, TX 76903
Steven C. Barnes P.O. Box 505 Midland, TX 79703	Viper Energy Partners 500 W. Texas Ave, Ste. 1200 Midland, TX 79701
Terri Ann Williams, Trustee of Trust C 1100 S. Pickard Norman, OK 73069	

PLOT DATE: 06/09/20 1:41 PM

EXHIBIT 'E'

EXISTING FRAC POND

OCCIDENTAL
PERMIAN LTD.

MISSOULA UNIT 806LS
NAVD88
SURFACE HOLE LOCATION
GND. ELEV. = 2,815.6'
NAD83 TX-C
Y = 10,717,985
X = 1,735,246
LAT. = 32°03'40.03" N
LONG. = 102°08'42.69" W
NAD27 TX-C
LAT. = 32°03'39.60" N
LONG. = 102°08'41.19" W

T&P RR CO.
A-719
SEC. 8
BLK. 39
T-1-S

PETROPLEX
ENERGY INC.

WESTERN T
CORPORATION

T&P RR. CO.
A-80
SEC. 9
BLK. 39
T-1-S

H. P. HILLIARD
A-1275
SEC. 9
BLK. X

PARSLEY ENERGY
OPERATIONS LLC

EVANS I LTD
DIAMONDBACK
E&P LLC

H. P. HILLIARD

A-17
SEC. 8
BLK. X

200 0 200 400
SCALE: 1" = 400 FEET

LEGEND

- SURVEY LINE
- - - EXISTING PIPELINE
- FL EXISTING FLOWLINE
- DHE EXISTING OVERHEAD ELECTRIC LINE
- X EXISTING FENCE LINE
- - - EXISTING UNDERGROUND ELECTRIC LINE
- - - MIDLAND CITY LIMITS
- EXISTING CALICHE ROAD
- EXISTING POWER POLE
- EXISTING GUY ANCHOR

NOTES:

- COORDINATES SHOWN ARE BASED ON NAD27 TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE.
- THIS PLAT DOES NOT, IN ANYWAY REPRESENT A "BOUNDARY SURVEY," AND DOES NOT COMPLY WITH THE CURRENT T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEY.

SIGNED: 06/09/2020



SALVADOR A. SALAS
REGISTERED PROFESSIONAL SURVEYOR
LICENSE NO. 6612

LNIV
engineers | architects | surveyors
801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408
WWW.LNIVINC.COM

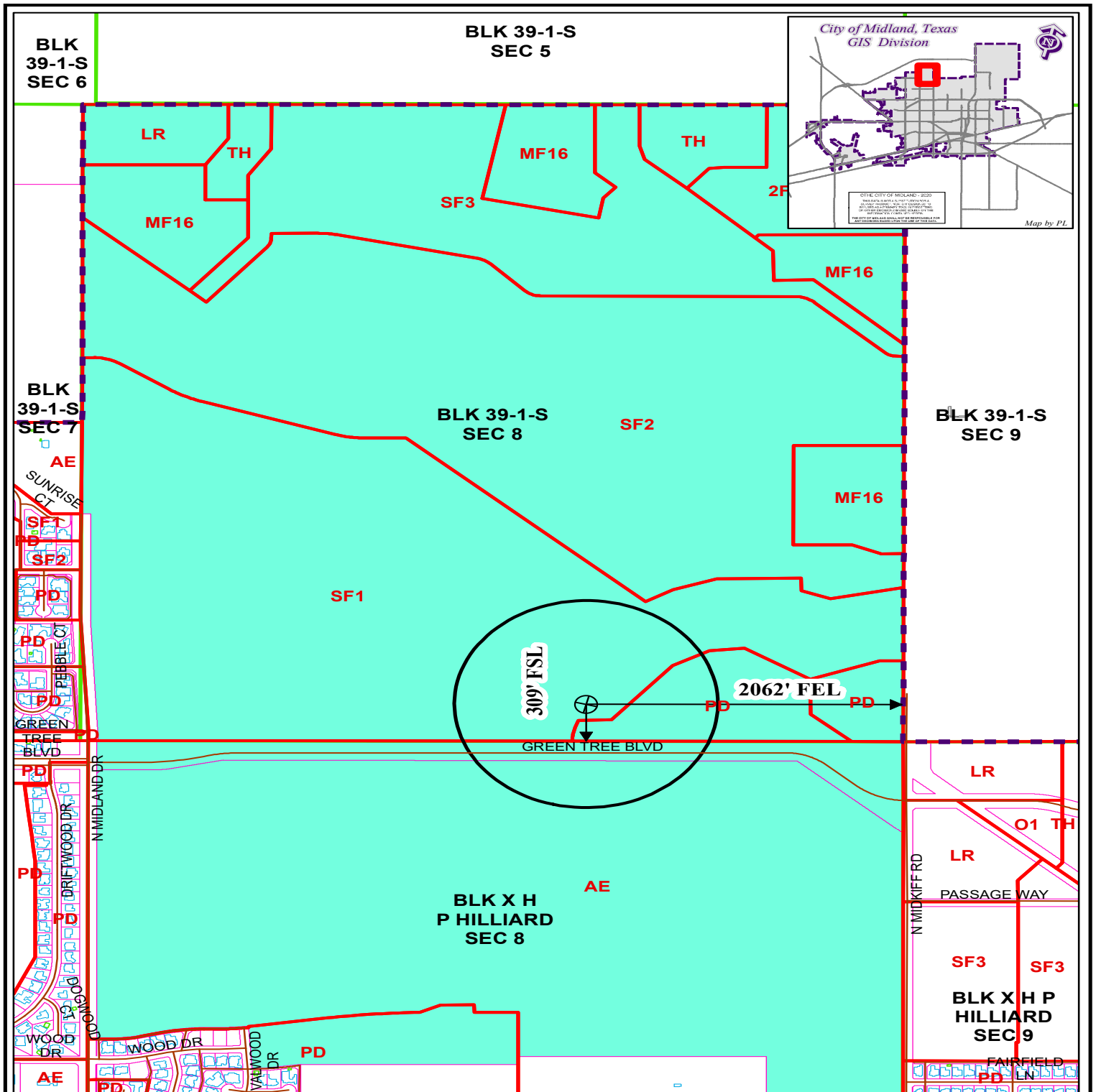
TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500

PH. (361) 883-1984
FAX (361) 883-1986

A DRILL SITE PLAN FOR:
DIAMONDBACK E&P LLC
MISSOULA UNIT 806LS

SITUATED IN T&P RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 1 SOUTH, RANGE 17 WEST, APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

Survey Date: 9/4/19
Surveyed By: RM/WR
Drawn by: CL
Checked by: AM/AA
Job #: 170008.413



LOCATION AND ZONING MAP

Oil - 027360 - 2020 **Scale: 1" = 900'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 309' FSL and 2,062' FEL, Section 8, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 409 feet north of Green Tree Blvd. extension and 2,062 feet west of North Midkiff Road extension.

PACKET

Missoula Unit 806LS

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
CE	COUNTRY ESTATE
1F, 2F, 3F	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
O1, O2	OFFICE
CS	COMMERCIAL SERVICE
C1, C2, C3	COMMERCIAL
IP, JPI, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BP	BUSINESS PARK
P	PARKING
O1, O2	OFFICE
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C1, C2, C3	COMMERCIAL
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LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

October 6, 2020



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 7/27/2020	Operator Name (must match W-1) DIAMONDBACK E&P LLC	Operator Address 500 W. TEXAS AVE., STE 1200 MIDLAND, TX 79701
Representative Name PAULA BRUNSON Regulatory Advisor	Representative Address (within Midland City Limits) 500 W. Texas Ave., Ste 1200 Midland, TX 79701	Rep. Tele. 432-221-7442 Rep. Fax
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Joel Martin, Production Manager 24/7 Answering Services - No. 1 (Tele.): 432-699-9332 No. 2 (Tele.): 432-238-9969 Option B: Joel Martin 500 W. Texas Ave., Ste 1200 432-238-9969 Midland, TX 79701 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): (Same as above)		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. See attached.		
2.		
3.		
ATTACHED AS EXHIBIT C is a Take-off from Amanda Gray, a Certified Petroleum Landman, indicating that Diamondback E&P LLC has a legal right to develop the mineral estate that is the subject of this Application. [See J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Farming and pasture.		
ATTACHED AS EXHIBIT D is a Current Tax Roll from Midland Central Appraisal District which lists the names and addresses of all surface owners within 860 feet of the surface well location. [See J(7)].		
PACKET	27.28	October 6, 2020

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: MISSOULA UNIT 817MS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:
See Exhibit W.

Legal Description of Proposed Well Site:

SHL: 2082' FEL & 309' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719

BHL: 1695' FEL & 2591' FNL, T&P RR Co Svy, Blk 39, T-1-S, Sec. 17, A-37

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Existing water wells location in Section 8, Blk 39, T&P RR Co Svy will be used. Other nearby wells will be used if needed. Trucking will also be used if needed.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certification. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

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Diamondback E&P LLC

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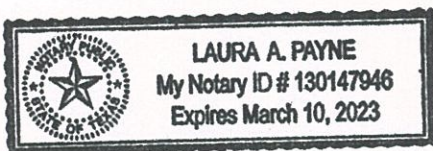
By Paula Brunson

Its Regulatory Advisor

State of Texas)

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[Seal]

Laura Payne
Notary Public, State of Texas

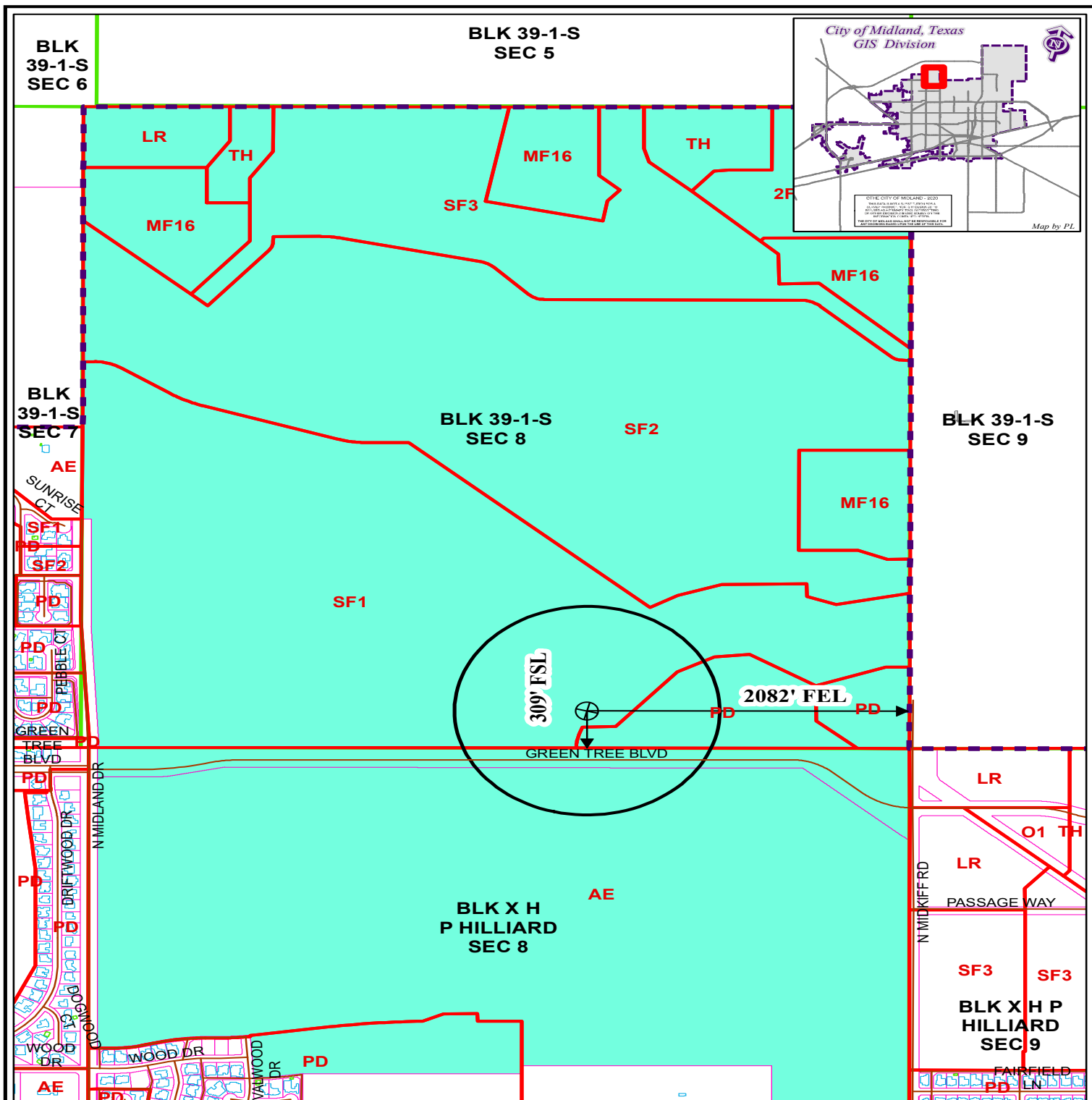
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PACKET

Missoula Unit 817MS

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
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ZONING	ACCESSORY BLDGS	SURVEY SEC.

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C1, C2, C3	COMMERCIAL
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LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

PS	PROFESSIONAL SERVICE
RS	RETAIL
IS	INDUSTRIAL SERVICE
HS	HEAVY SERVICE

October 6, 2020

PLOT DATE: 06/09/20 1:42 PM

EXHIBIT 'E'

EXISTING FRAC POND

OCCIDENTAL
PERMIAN LTD.

MISSOULA UNIT 817MS
NAVD88
SURFACE HOLE LOCATION
GND. ELEV. = 2,815.6'
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Y = 10,717,980
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LAT. = 32°03'39.98" N
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A-17
SEC. 8
BLK. X

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SIGNED: 06/09/2020



SALVADOR A. SALAS
REGISTERED PROFESSIONAL SURVEYOR
LICENSE NO. 6612

LNIV
engineers | architects | surveyors

801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408

WWW.LNIVINC.COM

TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500

PH. (361) 883-1984
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A DRILL SITE PLAN FOR:
DIAMONDBACK E&P LLC
MISSOULA UNIT 817MS

SITUATED IN T&P RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 1 SOUTH, RANGE 17 WEST, APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

Survey Date: 9/4/19

Surveyed By: RM/WR

Drawn by: CL

Checked by: AM/AA

Job #: 170008.414



City Council Meeting

Item Number: 29
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: Receive public comments regarding the development of the City's (COVID) Community Development Program relief projects funds. (DEVELOPMENT SERVICES)

Purpose:

Hold a public hearing for the express purpose of receiving public comments, and to allow the public to participate in the development of the City's (COVID) Community Development Program relief projects funds.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No Impact on the City of Midland Fiscal Budget.

Discussion:

The City has received a grant of approximately \$1,441,115 for the CDBG program year of 2020/2021 from the Coronavirus Aid Relief, and Economic Security Act (CARES Act); for the express purpose, and in response to the effects of this historic public health crisis. The CARES Act adds additional flexibility for both the CDBG-CV grant and in some cases, for the annual FY2020 CDBG grant during these unprecedented times.

Dolet Patel

City Manager's Office



City Council Meeting

Item Number: 30
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Carl Craigo, Director
Subject: AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES", OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (UTILITIES)

Purpose:

To amend Gallons above 50,000 water rate from \$19.65 to \$13.50 for customers in the City of Midland. To provide a credit on customers water bills retroactive to July 1, 2020 for the change of the rate.

Recommended City Council Action:

Approve

Fiscal Impact:

Subject to variations in water use by customers of the City of Midland.

Discussion:

With the inclusion of new water meters in the City, and creating a better accuracy of the amount of water used by our customers, we are experiencing many more customers that fall above the 50,000 gallon rate than was reported during the rate study almost a year ago. Staff is submitting to the Council a new top tier rate that will bring the rate down for all customers inside the City of Midland limits. Staff requests lowering the Tier V rate to \$13.50 to return to a revenue neutral position for the water fund. Also requested is a credit for the difference between the current rate (\$19.65) to the new rate retroactive to the July 1st date when the rate changed. Utilities staff is impressed with the accuracy of the new meters and that they have

not only lead to quantifying the exact water being consumed by our customers but that we can lower the rate for a revenue neutral system.

A handwritten signature in black ink, appearing to read "Robert Palmer". The signature is fluid and cursive, with the first name "Robert" and last name "Palmer" clearly distinguishable.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES”, OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds that it is in the public interest of the City of Midland to make amendments to Title III, Chapter 1, Section 2, of the Midland City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Title III, “Departments”, Chapter 1, “Water Department”, Section 2, “Rates”, of the Midland City Code, is hereby amended to read in its entirety as follows:

(A) *Customers inside of City limits:*

1. *Water rates:* The monthly water rates or charges for services furnished by the City’s waterworks system shall be as follows:
 - (a) For all customers other than apartments, the following charges shall apply:
 - i. The minimum charge shall be \$21.61 for the first 2,000 gallons or less;
 - ii. \$6.11 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
 - iii. \$8.03 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
 - iv. \$10.80 per 1,000 gallons for all water usage exceeding 25,000 gallons up to 50,000 gallons;
 - v. \$13.50 per 1,000 gallons for all water usage exceeding 50,000 gallons.
 - (b) All non-residential customers which shall include apartments that use water furnished by the City’s waterworks system for outside landscape irrigation purposes shall have installed, by the

City, a separate water meter with separate water lines used exclusively for irrigation purposes.

- i. Said water meter must be installed by the City, at the customer's expense.
 - ii. The City shall own said water meter.
 - iii. The customer, at the customer's expense, shall be responsible for the installation of any water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system according to the City's standard specifications.
 - iv. The requirement that a customer install said separate water meter with said separate water lines shall apply when the submission of a landscape plan or an amended landscape plan is required in connection with a request for a building permit for new construction or the expansion of an existing structure, as set forth in Title XI, Chapter 9 of the City Code of Midland, Texas.
 - v. The penalty for violation of this section shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).
- (c) For apartments, the minimum charge shall be \$17.60 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be \$1,760.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to subsection (B) of this section.

2. *Sewer rates:* The monthly rates or charges for services of users of the City's sewer system shall be as follows:

- (a) Residential (winter average). December, January, and February will be the residential winter average months. The average of the lowest two months out of the three will become the monthly charge for the following year. The residential charges shall be:
 - (1) The winter average or \$21.79 per month minimum, whichever is greater; plus
 - (2) \$0.88 per 1,000 gallons for water usage greater than 2,000 gallons.
- (b) Commercial (actual water consumption).
 - (1) \$21.79 per month minimum, plus

(2) \$0.88 per 1,000 gallons for water usage greater than 2,000 gallons.

(B) *Customers outside of City limits:* All customers, except for those qualifying for industrial rates, who obtain water or sewer service outside of the City limits shall pay 1.5 times the rates charged to customers inside the City limits.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to state law.

SECTION FIVE. This amendment is made retroactively effective as of July 1, 2020. Any additional funds collected above the amended rate will be applied as a credit on a customer's account.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publishing.

SECTION SEVEN. The City Manager is hereby directed to notify all customers outside the City Limits of the rate changes as required by state law.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 30
Meeting Date: October 6, 2020
To: City Council / City Manager
From: Regina Stephenson, Director
Subject: Resolution authorizing the negotiation and execution of an agreement for commercial saltwater disposal operations at T-Bar Ranch. (GENERAL SERVICES)

Purpose:

Approval of a resolution authorizing the Interim City Manager to negotiate and execute, on behalf of the City of Midland, an agreement for commercial saltwater disposal operations at T-Bar Ranch.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required.

Discussion:

Motion 105-2020 authorized the issuance of a request for proposals for produced water-related infrastructure to be located on certain City-owned real property known as "T-Bar Ranch" in Winkler and Loving Counties, Texas. 80 (eighty) request for proposals were issued. We received three (3) proposals. Staff recommends authorizing the Interim City Manager to negotiate and execute, on behalf of the City of Midland, an agreement for commercial saltwater disposal operations at T-Bar Ranch.

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE NEGOTIATION
AND EXECUTION OF AN AGREEMENT FOR
COMMERCIAL SALTWATER DISPOSAL
OPERATIONS AT T-BAR RANCH**

WHEREAS, Motion 105-2020 authorized the issuance of a request for proposals for commercial saltwater disposal operations at T-Bar Ranch; and

WHEREAS, the City Council finds it to be in the public interest to accept the proposal submitted by _____ and to authorize the negotiation and execution of an agreement with said company for said operations;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. That the Interim City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, an agreement with _____ for commercial saltwater disposal operations at T-Bar Ranch.

SECTION TWO. That the Interim City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, any and all related agreements, amendments, legal instruments, or documents necessary and appropriate to carry out the intent of said agreement for commercial saltwater disposal operations at T-Bar Ranch.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay for any and all attorney fees incurred by the City in connection with 1) the preparation, drafting, and finalizing of said request for proposals, and 2) the negotiation, drafting, and finalizing of any agreement pursuant to said request for proposals from funds available in the Water and Sewer Fund, upon receipt of proper invoice or statement approved by the City Attorney.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Carl Craig, Director of Utilities

Regina Stephenson, Director of General Services

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney